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The Honorable James L. Robart

UNITED STATES DISTRICT COURT OF THE WESTERN
DISTRICT OF WASHINGTON AT SEATTLE

CAROLINE ANGULO, a single person, ERIC
KELLER, a single person, EBEN NESJE, a
single person, KIRK SUMMERS, a single
person, CHRISTINE BASH, individually and as
personal representative of the ESTATE OF
STEVEN BASH, RAYMOND SUMERLIN JR.
and MARYANN SUMERLIN, a married
couple, and MARTIN WHITNEY and
SHERRYL WHITNEY, a married couple,

Plaintiffs.

v.

PROVIDENCE HEALTH & SERVICES
WASHINGTON, a non-profit Washington
Corporation, also d/b/a PROVIDENCE ST.
MARY MEDICAL CENTER; Dr. JASON A.
DREYER, DO, and JANE DOE DREYER,
husband and wife and the marital community
thereof; Dr. DANIEL ELSKENS DO, and
JANE DOE ELSKENS, husband and wife and
the marital community thereof; and
JOHN/JANE DOES 1-10, and any marital
communities thereof,

Defendants.

NO. 22-CV-00915-JLR

TRIAL BY JURY REQUESTED

**CLASS ACTION COMPLAINT
(THIRD AMENDED)**

1 Plaintiffs allege:

2 **I. INTRODUCTION**

3 1.1 For over 100 years, Defendant PROVIDENCE HEALTH & SERVICES
4 WASHINGTON (hereinafter “PROVIDENCE”) has been a member of the medical community in
5 the state of Washington, including Eastern Washington. Upon information and belief,
6 PROVIDENCE has owned and operated St Mary Medical Center (SMMC), a hospital located in
7 Walla Walla, Washington since 1880. Providence St. Joseph Health (“Providence St. Joseph
8 Health”) is a Washington non-profit corporation that shares its headquarters with PROVIDENCE.

9 1.2 PROVIDENCE promotes itself as providing excellent, reliable, and necessary
10 medical care.

11 1.3 PROVIDENCE employed Dr. DANIEL ELSKENS DO, and Dr. JASON A.
12 DREYER, DO, as neurosurgeons in its neurosurgery department at SMMC.

13 1.4 Upon information and belief, in order to increase its own profits, PROVIDENCE
14 instituted a pattern and practice that encouraged Dr. JASON A. DREYER, DO and Dr. DANIEL
15 ELSKENS DO to conduct unsupervised spine surgeries at high-volume rates using a productivity
16 metric with no cap on compensation that provided the neurosurgeons financial incentives to
17 perform a high volume of surgical procedures of greater complexity.

18 1.5 As a result of this pattern and practice, Dr. JASON A. DREYER, DO became one
19 of the highest producing neurosurgeons in the entire PROVIDENCE system, earning between \$2.5
20 and \$2.9 million a year for the years he was employed; at one point making him the second highest
21 paid employee in all of Providence, with only the CEO of the Corporation earning more.

22 1.6 Both neurosurgeons ultimately resigned from PROVIDENCE (Dr. DANIEL
23 ELSKENS DO on or about May 8, 2017, and Dr. JASON A. DREYER, DO on or about November

1 13, 2018). The resignations came on the heels of internal and DOH administrative investigations
2 into allegations that the surgeons were performing medically unnecessary and otherwise improper
3 spine surgeries and conducting surgical procedures below the standard of care.

4 1.7 After the resignation of Dr. DREYER and Dr. ELSKENS, a third neurosurgeon
5 employed by SMMC, Dr. David Yam, resigned and filed a complaint under the False Claims Act
6 alleging Providence, DREYER, and ELSKENS were committing medical billing fraud with
7 government funded insurance providers.

8 1.8 On April 12, 2022, PROVIDENCE announced a settlement with the United States
9 Department of Justice (“DOJ”) for \$22.7 million, to resolve allegations that PROVIDENCE
10 fraudulently billed Medicare, Medicaid, the Washington Health Care Authority, and other
11 government health care programs for neurosurgery procedures by Dr. JASON A. DREYER, DO
12 and Dr. DANIEL ELSKENS DO that did not meet criteria for reimbursement, that were medically
13 unnecessary, or that were otherwise improper.

14 1.9 For the first time, on April 12, 2022, PROVIDENCE admitted publicly that it was
15 aware of concerns raised by PROVIDENCE personnel about these neurosurgeons’ negligent,
16 violative, unethical, and fraudulent treatment practices and that it had investigated those concerns,
17 but that it nonetheless allowed both neurosurgeons to resign rather than report them to the National
18 Practitioner Data Bank (“NPDB”) or Washington State Department of Health (“WDOH”) as
19 required by law. For example, under 42 U.S.C. § 11133(a)(1) of the Healthcare Quality
20 Improvement Act of 1986, and the NPDB guidelines, health care entities are required to report
21 surrenders of physician clinical privileges while they are under investigation. Under these laws,
22 PROVIDENCE had a statutory and common law duty to disclose, including to the members of the
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24

1 class for their benefit in making material decisions about their healthcare. These failures to
2 disclose by Defendants were intended to, and did, prevent discovery of their claims by Plaintiffs.

3 1.10 Upon information and belief, PROVIDENCE was aware, or should have been
4 aware at or near the time of hiring these neurosurgeons that they consistently put patients' health
5 and safety at dire risk while making decisions based upon personal financial recovery rather than
6 medical necessity; yet PROVIDENCE actively concealed that information up to and including
7 failing to report them to the NPDB or the WSDH and allowing the neurosurgeons to depart their
8 employ with a publicly clean record.

9 1.11 According to the United States Department of Justice, the victims of these
10 medically unnecessary or otherwise improper surgeries by these neurosurgeons' number in the
11 "hundreds."¹

12 1.12 After his resignation from PROVIDENCE, Dr. JASON A. DREYER, DO was
13 hired by MultiCare Health System in Spokane, Washington [MULTICARE], where he continued
14 his pattern and practice of negligent, violative, unethical, and fraudulent treatment practices.

15 1.13 Although, upon information and belief, MULTICARE knew or should have
16 discovered concerns related to Dr. JASON A. DREYER, DO's gross misconduct at
17 PROVIDENCE through the extensive background investigation that is required before
18 hiring/retaining a surgeon and providing privileges to practice in its medical facilities, it was
19 reasonably foreseeable that PROVIDENCE's failure to report Dr. JASON A. DREYER, DO to
20 the NPDB or WDOH would prevent or delay discovery of the faulty medical care that Dr. JASON

21
22 ¹ Hill, *Providence to Pay \$22.7 Million to Settle Medicare, Medicaid Fraud Whistleblower*
23 *Complaint Brought Against two Walla Walla Neurosurgeons*, Spokes. Rev. (April 13, 2022 –
24 updated April 14, 2022) <https://www.spokesman.com/stories/2022/apr/13/providence-to-pay-227-million-to-settle-medicare-m/>

1 A. DREYER, DO had provided previous patients to the financial benefit of PROVIDENCE;
2 which would result in continued harm to future patients; and, would impact the care that his
3 previous patients received in follow-up to Dr. JASON A. DREYER, DO's faulty and fraudulent
4 medical care.

5 1.14 In response to the pattern of negligent, violative, unethical, and fraudulent treatment
6 practices of Dr. JASON A. DREYER, DO under the direct authority of PROVIDENCE, and
7 fraudulent concealment thereof by all DEFENDANTS, this cause of action is brought by the class
8 of patients whose lives have been forever changed as a result of the actions or omissions of the
9 DEFENDANTS herein named.

10 1.15 Filed as a Class Action, this Cause captures the broad body of patients and their
11 families impacted by the negligent, violative, unethical, and fraudulent treatment practices of Dr.
12 JASON A. DREYER, DO and Dr. DANIEL ELSKENS, DO under the direct authority of
13 PROVIDENCE, and fraudulent concealment thereof by all DEFENDANTS, and allows for redress
14 of those named and unnamed members of the Class.

15 1.16 The Class Action allegations assert claims on behalf of the PROVIDENCE and
16 MULTICARE patients who suffered damages due to DEFENDANTS' negligent, violative,
17 unethical, and fraudulent treatment practices which DEFENDANTS concealed from, *inter alia*,
18 Plaintiffs for their financial gain, in violation of the law.

19 1.17 Set forth herein below, named Plaintiffs designated in Section II as class
20 representatives ("Class Plaintiffs") bring claims individually and on behalf of the Class.

21 1.18 For purposes of the causes of action, damages, and relief requested in this lawsuit,
22 all Plaintiffs are referred to collectively, as they have all been the victims of the same course of
23 conduct by DEFENDANTS detailed below.

II. PARTIES

2.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 1.18 as if fully set forth herein.

2.2 Plaintiff CAROLINE ANGULO, a single person, representing herself and the Settlement Class, was at all times relevant hereto residing in Walla Walla County, Washington.

2.3 Plaintiff ERIC KELLER, a single person, representing himself and the Non-Settlement Class/Providence, was at all times relevant hereto residing in Union County, Oregon.

2.4 Plaintiff EBEN NESJE, a single person, representing himself and the Settlement Class, was at all times relevant hereto residing in Columbia County, Washington.

2.5 Plaintiff KIRK SUMMERS, representing himself and the Settlement Class, was at all times relevant hereto residing in Columbia County, Washington.

2.6 Plaintiff CHRISTINE BASH, individually and as personal representative of the ESTATE OF STEVEN BASH, is the surviving wife of STEVEN BASH and the personal representative of the ESTATE OF STEVEN BASH with probate pending in Walla Walla County, representing herself and the ESTATE, is a member of the Settlement Class and was at all times relevant hereto a resident of Walla Walla County, Washington. STEVEN BASH was also a resident of Walla Walla County at the time of his death at the age of 51.

2.7 Plaintiffs RAYMOND SUMERLIN JR. and MARYANN SUMERLIN, representing themselves and the Non-Settlement Class/MultiCare, were at all times relevant hereto a married couple, residing in Walla Walla County, Washington.

2.8 Plaintiffs MARTIN WHITNEY and SHERRYL WHITNEY, representing themselves and the Non-Settlement Class/MultiCare, were at all times relevant hereto a married couple, residing in Stevens County, Washington.

1 2.9 Plaintiffs, on behalf of themselves and those similarly situated, bring this action
2 against DEFENDANTS for violations of

3 • RCW 9A.82.080 and 9A.82.100 (Criminal Profiteering)
4 • RCW 19.86 et seq. (Unfair Business Practices/Consumer Protection) (“CPA”)
5 • RCW 7.70 et seq. (“Actions for Injuries Resulting from Health Care”), and
6 • Tort actions, including, without limitation, corporate negligence and statutory duty
7 violations, see RCW 70.41.210, as set forth below.

8 2.10 At all relevant times, each Plaintiff, named and unnamed, was “a person who
9 sustain[ed] injury to his or her person, business, or property by an act of criminal profiteering that
10 is part of a pattern of criminal profiteering activity, or by an offense defined in” RCW 9A.82.080.
11 See RCW 9A.82.100.

12 2.11 At all relevant times, each Plaintiff, named and unnamed, was a “person who was
13 injured in his or her business or property” by a violation of the CPA. See RCW 19.86.090.

14 2.12 At all relevant times, each Plaintiff, named and unnamed, was a person to whom
15 DEFENDANTS owed a duty, either through RCW 7.70, corporate negligence, or through common
16 law/statute, *e.g.*, RCW 70.41.210, which requires hospitals to report to the Department of Health,
17 any restriction or termination of the practice of a health care practitioner while the practitioner is,
18 *inter alia*, under investigation or in return for the hospital not taking action.

19 2.13 Defendant PROVIDENCE HEALTH & SERVICES WASHINGTON also d/b/a
20 PROVIDENCE ST. MARY MEDICAL CENTER (hereinafter PROVIDENCE) is a Washington
21 nonprofit corporation with its primary place of business located 1801 Lind Avenue, Southwest,
22 Renton, WA 98057, which is geographically located in King County, Washington.
23 PROVIDENCE has offices to conduct business, regularly conducts business, and manages medical
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1 facilities across the state of Washington.

2 2.14 At all relevant times hereto, Defendant JASON A. DREYER, DO was a licensed
3 physician, and citizen of Washington residing in, and practicing medicine in Walla Walla County
4 or Spokane County, Washington, as an employee or ostensible agent of either PROVIDENCE or
5 at MultiCare Health System D/B/A MultiCare Deaconess Hospital / Rockwood Clinic (collectively
6 MULTICARE). At all times relevant hereto, JASON A. DREYER, DO held himself out to be a
7 medical care provider whose services were offered to the public for compensation. It is unknown
8 if JASON A. DREYER, DO is married, therefor, Plaintiffs allege that if he is married, all acts or
9 omissions committed by JASON A. DREYER, DO were done both for, and on behalf of, the
10 community composed of JASON A. DREYER, DO and his wife, JANE DOE DREYER.

11 2.15 At all relevant times hereto, Defendant DANIEL ELSKENS, DO was a licensed
12 physician, and citizen of Washington, residing in, and practicing medicine in Walla Walla County,
13 Washington, as an employee or ostensible agent of PROVIDENCE. At all times relevant hereto,
14 DANIEL ELSKENS, DO held himself out to be a medical care provider whose services were
15 offered to the public for compensation. It is unknown if DANIEL ELSKENS, DO is married,
16 therefor, Plaintiffs allege that if he is married, all acts or omissions committed by DANIEL
17 ELSKENS, DO were done both for, and on behalf of, the community composed of DANIEL
18 ELSKENS, DO and his wife, JANE DOE ELSKENS.

19 2.16 Upon information and belief, JOHN / JANE DOE employees or agents of
20 PROVIDENCE (and any spouses/marital communities thereof) reside and/or work in the State of
21 Washington and include but are not limited to those listed in the 2020 *qui tam* action that resulted
22 in the 2022 settlement between PROVIDENCE and the DOJ (i.e., PROVIDENCE's Chief Medical
23 Officer and key PROVIDENCE administrators in Walla Walla, Spokane, and Renton, WA). See

1 *United States ex rel. Yam v. Providence Health & Services Washington*, Case No. 4:20-cv-05004-
 2 SMJ (E.D. Wash.), Settlement Agreement dated March 2022 (unsealed April 11, 2022).

3 2.17 At all relevant times, DEFENDANTS concealed and otherwise avoided release of
 4 information to the Plaintiffs of their negligent and/or illicit activity with regard to the unnecessary
 5 and/or otherwise improper medical treatments of Dr. JASON A. DREYER, DO and Dr.
 6 DANIELELSKENS, DO, including DEFENDANTS' failure to report the neurosurgeons to proper
 7 authorities as legally required.

8 2.18 At all relevant times, the first notice that any Plaintiff, named and unnamed,
 9 received regarding DEFENDANTS' actions was April 12, 2022 – the day the DOJ announced its
 10 settlement with PROVIDENCE for restitution for false health care payments, and the agreed-upon
 11 upon facts elicited thereto.

12 **III. JURISDICTION AND VENUE**

13 3.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and
 14 incorporate by reference paragraphs 1.1 through 2.15 as if fully set forth herein.

15 3.2 The State of Washington has subject matter jurisdiction over this action pursuant
 16 to RCW 2.08.010 because most alleged acts occurred in this State. In addition, upon information
 17 and belief, more than 2/3 of the members of the proposed class are citizens of Washington.

18 3.3 Jurisdiction and venue are proper in and for the Superior Court of Washington for
 19 King County because at all times relevant hereto, Defendant PROVIDENCE's controlling
 20 business offices were located in King County, Washington and removal to federal court is not
 21 authorized or justified under 28 U.S.C. § 1453.

22 **IV. TIMELINE AND FACTS**

23 4.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and
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1 incorporate by reference paragraphs 1.1 through 3.3 as if fully set forth herein.

2 4.2 Between July 1, 2013, and November 13, 2018, PROVIDENCE employed Dr.
3 JASON A. DREYER, DO as a neurosurgeon at SMMC in Walla Walla.

4 4.3 PROVIDENCE employed Dr. DANIEL ELSKENS, DO between November 2015
5 and May 2017 as a neurosurgeon at SMMC in Walla Walla.

6 4.4 Upon information and belief, PROVIDENCE encouraged Dr. JASON A.
7 DREYER, DO and Dr. DANIEL ELSKENS, DO to perform a high volume of surgical procedures
8 of greater complexity to increase PROVIDENCE profits.

9 4.5 Upon information and belief, PROVIDENCE encouraged Dr. JASON A.
10 DREYER, DO and Dr. DANIEL ELSKENS, DO to conduct spine surgeries at high-volume rates
11 by applying a productivity bonus metric scheme that provided the surgeons financial incentive to
12 perform a high volume of surgical procedures of greater complexity.

13 4.6 Upon information and belief, Dr. JASON A. DREYER, DO and Dr. DANIEL
14 ELSKENS, DO did conduct complex spine surgeries at high-volume rates with intent and purpose
15 of collecting productivity incentive money.

16 4.7 DEFENDANTS' actions resulted in the performance of medical treatments that did
17 not meet criteria for health care insurance reimbursement, that were medically unnecessary, or that
18 were otherwise improper, for which improper submissions for payment to health insurance entities
19 occurred, including to e.g., Medicare and Medicaid, all for DEFENDANTS' financial benefit.

20 4.8 Dr. DANIEL ELSKENS, DO resigned from PROVIDENCE on or about May 8,
21 2017.

22 4.9 Upon information and belief, Dr. DANIEL ELSKENS, DO's resignation was
23 triggered, at least in part, by allegations that he was performing unnecessary surgeries in order to
24

1 capitalize on the PROVIDENCE productivity bonus metric scheme.

2 4.10 Dr. JASON A. DREYER, DO resigned from PROVIDENCE on or about
3 November 13, 2018.

4 4.11 Upon information and belief, Dr. JASON A. DREYER, DO's resignation was
5 triggered, at least in part, by allegations that he was performing unnecessary surgeries in order to
6 capitalize on the PROVIDENCE productivity bonus metric scheme.

7 4.12 After November 13, 2018, and until March 2021, Dr. JASON A. DREYER, DO
8 worked for MULTICARE as an employee and/or contractor. While at MULTICARE, Dr. JASON
9 A. DREYER, DO continued the pattern and practice established at PROVIDENCE of conducting
10 high-volume surgeries that did not meet criteria for health care insurance reimbursement, that were
11 medically unnecessary, or that were otherwise improper, all for the financial benefit of Dr. JASON
12 A. DREYER, DO and MULTICARE.

13 4.13 On January 10, 2020, Dr. David Yam, M.D., as Relator, and on behalf of the United
14 States and Washington State, filed a complaint (the 2020 *qui tam* complaint) in the Eastern District
15 of Washington, alleging violations of the False Claims Act against PROVIDENCE. See *United*
16 *States ex rel. Yam v. Providence Health & Services Washington*, Case No. 4:20-cv-05004.
17 (Complaint attached as Exhibit 1).

18 4.14 The allegations in the 2020 *qui tam* complaint were based upon the fraudulent
19 billing for medically unnecessary and otherwise improper care provided by PROVIDENCE via its
20 agents / employees Dr. JASON A. DREYER, DO and Dr. DANIEL ELSKENS, DO.

21 4.15 As statutorily required, this 2020 *qui tam* complaint was filed under seal.

22 4.16 By notice dated January 13, 2022, the United States Justice Department intervened
23 in the 2020 *qui tam* complaint. This also was done under seal and not made public, per statute.

1 4.17 The 2020 *qui tam* complaint alleged, and PROVIDENCE later admitted salient
2 facts showing PROVIDENCE was billing the federal and state governments for these
3 neurosurgeons' medical services that did not meet criteria for reimbursement, were medically
4 unnecessary, and/or were otherwise improper.

5 4.18 On or about March 17, 2022, PROVIDENCE entered into a Settlement Agreement
6 (SA) with the United States Government and the State of Washington.² The agreement calls for
7 PROVIDENCE to pay a total of \$22,690,458 (\$10,459,388 of which is specified as restitution)
8 along with remedies and protocols to ensure, *inter alia*, patients' future safety. The SA does not
9 require any payment from Drs. Dreyer or Elskens.

10 4.19 As detailed in the SA, Dr. JASON A. DREYER, DO was accused of (a) falsifying,
11 exaggerating, and/or inaccurately diagnosing patients' true medical conditions in order to obtain
12 reimbursement for surgical procedures performed by him; (b) performing certain surgical
13 procedures that did not meet the medical necessity guidelines and requirements for reimbursement
14 set forth by Medicare and other government health insurance programs; (c) "over-operating," i.e.,
15 performing a surgery of greater complexity and scope than was indicated and medically
16 appropriate; (d) jeopardizing patient safety by attempting to perform an excessive number of
17 overly complex surgeries; (e) endangering patients' safety; (f) creating an excessive level of
18 complications, negative outcomes, and necessary additional operations as a result of their
19 surgeries; (g) performing surgical procedures on certain candidates who were not appropriate
20 candidates for surgery given their medical histories, conditions, and contraindications; and (h)
21 failing to adequately and accurately document certain procedures, diagnoses, and complications.
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24 ² See Settlement Agreement Attached as Exhibit 2.

1 Also as detailed in the SA, Dr. DANIEL ELSKENS, DO was accused of Items (e) through (h).

2 4.20 As detailed in the SA, PROVIDENCE accepted payments from federal and state
3 health care sources (e.g., Medicare, Medicaid, the FEHBP, TRICARE, and VA Community Care)
4 while being aware of these allegations against these neurosurgeons.

5 4.21 These facts were stipulated by PROVIDENCE in the SA as true and accurate.

6 4.22 As a result of this pattern and practice of PROVIDENCE, Dr. JASON A. DREYER,
7 DO was one of the highest producing neurosurgeons in the entire 7-state PROVIDENCE system,
8 earning between \$2.5 and \$2.9 million a year for the years where he was employed.

9 4.23 According to the SA, despite knowledge of these neurosurgeons' misconduct, and
10 despite placing them each on administrative leave due to concerns listed in paragraph 4.19 above,
11 PROVIDENCE allowed Dr. DANIEL ELSKENS, DO and Dr. JASON A. DREYER, DO to resign
12 instead of terminating their employment.

13 4.24 According to the SA, despite having knowledge of these neurosurgeons'
14 misconduct, PROVIDENCE reported neither neurosurgeon to legal authorities (e.g., NPDB or
15 WDOH). This occurred despite the legal obligation to report, see 42 U.S.C. § 11133(a)(1) and
16 RCW 70.41.210, and would later be the basis for a finding by the WDOH substantiating a violation
17 of this reporting obligation.

18 4.25 According to the SA, despite having knowledge of these neurosurgeons'
19 misconduct, PROVIDENCE took no action to refund Medicare or Medicaid for surgical
20 procedures performed by either Dr. DANIEL ELSKENS, DO or Dr. JASON A. DREYER, DO
21 for which PROVIDENCE had previously sought and received reimbursement.

22 4.26 Upon information and belief, PROVIDENCE also:

23 4.26.1 accepted payments from private insurance health care sources using similar
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1 or the same criteria for payment/non-payment of surgeries (including requirements that
2 medical treatment be necessary or be otherwise proper);

3 4.26.2 did so while being or becoming aware of the allegations against these
4 neurosurgeons as outlined above and in the 2020 *qui tam* complaint and the SA; and

5 4.26.3 took no action at any time to refund any private insurance health care source
6 or any self-funded patients for any surgical procedures performed by either Dr. DANIEL
7 ELSKENS, DO or Dr. JASON A. DREYER, DO for which PROVIDENCE had previously
8 sought and received reimbursement.

9 4.27 Upon information and belief, PROVIDENCE was aware or should have been aware
10 at or near the time of hiring these neurosurgeons that the neurosurgeons put patients at dire risk
11 and performed these kinds of medically unnecessary or otherwise improper procedures, yet
12 PROVIDENCE presumably concealed that information and any and all of its knowledge regarding
13 this unprofessional conduct until April 12, 2022, when the Settlement Agreement was made public.

14 4.28 In addition to the agreed-upon Settlement Agreement statements regarding
15 DANIEL ELSKENS, DO, the 2020 *qui tam* complaint specifically alleged as follows:

16 4.28.1 The relator, Dr. Yam, alleged that he reviewed Dr. Elskens' work; the
17 review revealed Dr. Elskens committed severe surgical errors, including by operating on
18 incorrect spinal sections, resulting in post-operation complications necessitating
19 emergency remedial surgery;

20 4.28.2 Dr. Yam reported the errors to Providence's chief medical officer,
21 recommending that Dr. Elskens be terminated;

22 4.28.3 Providence, after rejecting the recommendation, suspended Dr. Elskens
23 when Dr. Yam discovered Dr. Elskens botched an additional surgery, nearly paralyzing the
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1 patient nearly a year later after many more patients were adversely harmed.

2 4.29 In addition to the agreed-upon Settlement Agreement statements regarding JASON
3 A. DREYER, DO, the 2020 *qui tam* complaint specifically alleged:

4 4.29.1 After Providence failed to take seriously his initial allegations against Dr.
5 Elskens, Dr. Yam began reviewing the work of his fellow neurosurgeon with greater
6 scrutiny and, as such reviewed the work of Dr. Jason Dreyer because Dr. Dreyer, who
7 studied under Dr. Elskens, spoke highly of Dr. Elskens and recommended Dr. Elskens to
8 join the group in Walla Walla;

9 4.29.2 Dr. Yam's review of Dr. Dreyer revealed that Providence (through Dr.
10 Dreyer) was billing the federal government for medical services which neither Dr. Dreyer
11 nor Providence performed; in addition, Dr. Dreyer was fabricating patient diagnoses and
12 treatments to justify complex operations and to increase billing and reimbursement for both
13 himself and Providence; Dr. Dreyer would knowingly, and routinely, falsify patient records
14 to justify as medically necessary certain expensive surgical procedures; Providence and Dr.
15 Dreyer carried out this improper practice by subjecting patients to risky procedures that
16 were legitimized through fraudulent diagnoses;

17 4.29.3 In one instance, for example, Providence and Dr. Dreyer claimed a patient
18 receiving federally funded treatment suffered from a severe deformity that required
19 complex surgery, which Dr. Dreyer performed at great risk to the patient when, in fact, the
20 deformity was documented not to exist in the patient;

21 4.29.4 Dr. Yam believed, and alleged, that Dr. Dreyer's improper practices
22 provided a windfall to Providence at the federal government's expense which likely
23 amounted to tens of millions of dollars and likely more;

1 4.29.5 When Dr. Yam initially reported his concerns to Providence in November
2 2017, Providence assured him action would be taken but that action was insufficient,
3 causing Dr. Yam to allege that the response was designed to allow Providence to continue
4 to benefit from the aforementioned windfall;

5 4.29.6 Dr. Dreyer continued his same pattern and practice until Dr. Yam again
6 complained in April 2018, explicitly using the words “fraud,” “malpractice,” and “harm”
7 in emails to key Providence administrators in Walla Walla, Spokane, and Renton,
8 Washington.

9 4.29.7 Providence responded to Dr. Yam’s renewed complaint through a flawed
10 investigation which, Dr. Yam was told, revealed no evidence of false billing, yet
11 Providence administrators allowed for the voluntary suspension of Dr. Dreyer

12 4.30 Historically, repeatedly, and currently, PROVIDENCE sets itself out to the public
13 in its promotional material as a caring, moral, health care provider with integrity that puts patients’
14 needs first (not its own financial gain). For example, it has made the following public statements:

15 4.30.1 “We strive to do what’s right for people, all people, but especially the poor
16 and vulnerable.”

17 4.30.2 “We don’t take the easiest answer, we look for the right answer.”

18 4.30.3 “Integrity means you are always approaching things with a moral
19 viewpoint. In our case, a moral viewpoint that is adjusted for the benefit of the many, and
20 not the few.”

21 4.30.4 “At Providence we see more than patients, we see the life that pulses
22 through us all. That’s why we’re dedicated to a holistic approach to medicine that employs
23 not only the most advanced treatments to improve outcomes, but also puts compassion and

1 humanity at the heart of every interaction.”

2 4.30.5 “We use our voice to advocate for vulnerable populations and needed
3 reforms in health care. We are also pursuing innovative ways to transform health care by
4 keeping people healthy, and making our services more convenient, accessible and
5 affordable for all. In an increasingly uncertain world, we are committed to high-quality,
6 compassionate health care for everyone, regardless of coverage or ability to pay. We help
7 people and communities benefit from the best health care model for the future – today.”

8 4.30.6 “As a comprehensive health care organization, we are serving more people,
9 advancing best practices, and continuing our more than 100-year tradition of serving the
10 poor and vulnerable. Delivering services across seven states, Providence is committed to
11 touching millions of more lives and enhancing the health of the American West to
12 transform care for the next generation and beyond.”

13 4.30.7 “We set the highest standards for ourselves and our ministries. Through
14 transformation and innovation, we strive to improve the *health* and quality of life...”

15 4.31 These representations were and are designed to entice the public to rely upon
16 PROVIDENCE for medical care without reservation or concern about PROVIDENCE’s care and
17 protection of their best and highest health.

18 4.32 Rather than inform Plaintiffs and the public of the scheme at SMMC of, *inter alia*,
19 medically unnecessary surgeries for financial gain (described herein), PROVIDENCE concealed
20 the scheme and maintained secrecy, to the extent of failing to report the neurosurgeons, including
21 those under investigation, to proper authorities, and did so to maintain at all costs its squeaky-clean
22 public persona, thus engaging in deceptive and unfair acts in order to market its health care services
23 to new patients.

1 4.33 Even today, PROVIDENCE continues to engage in deceptive and unfair acts by
2 publicly minimizing the SMMC situation (including the \$22.7 million settlement and the safety
3 precautions it now must implement across all its facilities) by falsely calling it an “isolated incident
4 in Walla Walla” on April 12, 2022, despite the extensive damage done to its patients, despite its
5 fiduciary obligations to those patients, and despite the fact that senior administrators from Walla
6 Walla, Spokane, and Renton headquarters were informed about Walla Walla as early as 2018. A
7 true and correct copy of this April 12, 2022 Statement is attached as Exhibit 3.

8 4.34 Since the filing of the Class Action Complaint on May 16, 2022, PROVIDENCE
9 continued to engage in its deceptive and unfair acts by publishing a full-page advertisement on
10 June 5, 2022, in the Walla Walla Union Bulletin that minimizes, misleads, and/or inaccurately
11 describes the aforementioned events and PROVIDENCE’s responsibility therein, including its
12 fiduciary duties to patients. A true and correct copy of this June 5, 2022 full-page advertisement
13 is attached as Exhibit 4.

14 4.35 PROVIDENCE’s profit over patient safety practice ultimately resulted in patients
15 of PROVIDENCE and MULTICARE suffering permanent, debilitating harm as a result of
16 neurosurgeons Dr. DANIEL ELSKENS, DO and Dr. JASON A. DREYER, DO’s negligent,
17 violative, unethical, and fraudulent treatment practices; the value of which will be set forth fully
18 at trial.

19 4.36 By and through their fraudulent, violative, unethical, and negligent practices,
20 PROVIDENCE’s continued profit over patient safety practice resulted in actual financial loss to
21 the named Plaintiff’s and associated class of Plaintiffs as set forth herein in dollar amounts that
22 will be set forth fully at trial.

V. INDIVIDUAL PLAINTIFFS / CLASS REPRESENTATIVES

5.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 4.36 as if fully set forth herein.

5.2 Facts associated with individual class representatives as set forth below are representative of medical negligence, and deceptive patterns and practices employed by DEFENDANTS, to entice patients into agreeing to medically unnecessary or otherwise improper surgical procedures and related medical care.

CAROLINE ANGULO

5.3 Plaintiff CAROLINE ANGULO, 59 years old, was a patient of PROVIDENCE at SMMC, whose surgery was negligent, medically unnecessary or otherwise improper, and whose medical expenses should either be a part of the Settlement Agreement restitution or would have been if the DOJ and PROVIDENCE had not settled.

5.4 Ms. ANGULO's insurance at all relevant times was Medicare or Medicaid.

5.5 In or around the spring of 2016, Ms. ANGULO consulted with Dr. DANIEL ELSKENS, DO at SMMC because she was experiencing lower back pain.

5.6 During the consultation, Dr. ELSKENS informed Ms. ANGULO that, in his opinion, her neck looked worse than her back, and he recommended cervical surgery instead of lumbar surgery.

5.7 Based on, and in reliance of, the advice and stated opinion of Dr. ELSKENS, DO, Ms. ANGULO agreed to the cervical surgery.

5.8 Ms. ANGULO's cervical surgery took place on or about April 25, 2016. The procedure, performed by Dr. ELSKENS, DO, included cervical fusion at levels C5 through C7, and was performed using the anterior approach only. He also did a carpal tunnel surgery during

1 the same surgery.

2 5.9 The surgery went poorly. Ms. ANGULO had to remain in the hospital for over a
3 month. Her vocal cords were damaged, and she could not speak. She has never recovered from
4 this surgery. Moreover, during her follow-up treatment, Dr. ELSKENS, DO was suddenly
5 unavailable, leaving Ms. ANGULO without a neurosurgeon.

6 5.10 Upon information and belief, this was a negligent, medically unnecessary and/or
7 otherwise improper procedure that was part of a pattern and practice of PROVIDENCE via its
8 agent / employee DANIEL ELSKENS, DO, to perform such unnecessary or otherwise improper
9 procedures for the purpose of financial gain, resulting in foreseeable, permanent damages to Ms.
10 ANGULO.

11 5.11 In or around the fall of 2017, Ms. ANGULO's primary care provider referred her
12 to Dr. JASON A. DREYER, DO, at SMMC because of her continuing lower back pain. During
13 the consultation, Dr. JASON A. DREYER, DO, informed Ms. ANGULO that he saw a "big
14 problem" with her neck that required more surgery.

15 5.12 Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, Ms.
16 ANGULO agreed to his recommendation.

17 5.13 On or about November 18, 2017, Dr. DREYER performed a cervical/thoracic
18 fusion on Ms. ANGULO. This surgery was both anterior and posterior according to what the
19 hospital provided her, the fusion ranged from either levels C3 through C7, or C3 through T2 – she
20 was provided with medical ID cards for both.

21 5.14 Upon information and belief, this was a negligent, medically unnecessary and/or
22 otherwise improper procedure that was part of a pattern and practice of PROVIDENCE via its
23 agent / employee JASON A. DREYER, DO, to perform such medically unnecessary or otherwise

1 its agent / employee JASON A. DREYER, DO at SMMC because he was experiencing lower back
2 pain.

3 5.20 While discussing the pain and discomfort in his lower back, JASON A. DREYER,
4 DO and Mr. KELLER discussed a prior cervical fusion Mr. KELLER had many years ago that
5 was successful and was causing him no pain or difficulty.

6 5.21 JASON A. DREYER, DO advised Mr. KELLER that what he really needed was
7 surgery on his neck before any lumbar surgery.

8 5.22 When Mr. KELLER advised Dr. DREYER “my neck isn’t the problem,” Dr.
9 DREYER informed him he had more wrong with his neck than he thought he did. Dr. Dreyer
10 went on to tell Mr. KELLER his neck was so unstable that he risked paralysis during any proposed
11 lumbar surgery if he did not agree to the cervical surgery first. Dr. DREYER informed him he
12 would be turning him during the lumbar surgery and it would put pressure on the cervical spine
13 when he did this while under anesthesia.

14 5.23 Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, and
15 fearing paralysis, Mr. KELLER agreed to the cervical surgery.

16 5.24 Mr. KELLER’s cervical surgery took place in or around August 2017. Following
17 this procedure, Mr. KELLER was not able to return to work.

18 5.25 Upon information and belief, this was a medically unnecessary or otherwise
19 improper procedure that was part of a pattern and practice of PROVIDENCE via its agent /
20 employee JASON A. DREYER, DO, to perform such unnecessary/improper procedures for the
21 purpose of financial gain, resulting in foreseeable, permanent damages to Mr. KELLER.

22 5.26 Following the cervical spine surgery, Mr. KELLER again asked Dr. DREYER to
23 look at his lumbar region. Dr. DREYER told Mr. KELLER he needed surgery on the lumbar
24

1 spine.

2 5.27 Thereafter, Mr. KELLER's insurance, Regence Blue Shield, would not clear
3 coverage for the procedure proposed.

4 5.28 On or about January 12, 2018, Dr. DREYER told Mr. KELLER the insurance
5 company did not want to cover the surgery. Dr. Dreyer told Mr. KELLER to come in to his office
6 the morning of January 17, and he (Dr. DREYER) would send him to the emergency room.
7 According to Dr. DREYER, the insurance company would have to pay for the procedure because
8 it would be indicated as an "emergency procedure."

9 5.29 Mr. KELLER followed the direction of Dr. DREYER. He was admitted to SMMC
10 through the emergency department.

11 5.30 On or about January 18, 2018, Dr. DREYER performed the lumbar surgery.

12 5.31 This surgery caused permanent and debilitating nerve damage.

13 5.32 Upon information and belief, PROVIDENCE via its agent / employee Dr. JASON
14 A. DREYER, DO, conducted this unnecessary or otherwise improper surgery on an emergency
15 basis in order to avoid insurance pre-authorization and to force Regence Blue Shield (Mr.
16 KELLER's private health insurer) to pay for the procedure without formal pre-authorization.

17 5.33 Upon information and belief, this was a medically unnecessary or otherwise
18 improper procedure that was part of a pattern and practice of PROVIDENCE via its agent /
19 employee JASON A. DREYER, DO, to perform such medically unnecessary/improper procedures
20 for the purpose of financial gain, resulting in foreseeable, permanent damages to Mr. KELLER.

21 5.34 As a result of these unnecessary and otherwise improper surgeries, Mr. KELLER
22 has suffered and continues to suffer general and special permanent damages, including but not
23 limited to: job loss (from Boise Cascade); a designation of disability (SSD); constant pain and
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1 discomfort; constant groin sensitivity and pain; pain radiating down both legs into his feet; muscle
2 lock-ups (making him bedridden for days); significant difficulty walking; inability to sleep, sit or
3 stand for any period of time; fatigue; anxiety, and depression. He is on pain medication daily.

4 5.35 Prior to April 12, 2022, Mr. KELLER was unaware of PROVIDENCE's admission
5 of salient facts as outlined herein and in its settlement with the DOJ.

6 5.36 Upon information and belief, on a more likely than not basis, the damage done by
7 PROVIDENCE and JASON A. DREYER, DO to Mr. KELLER is permanent and irreversible.

8 **EBEN NESJE**

9 5.37 Plaintiff EBEN NESJE, 43 years old, was a patient of PROVIDENCE at SMMC,
10 whose surgery was negligent, medically unnecessary or otherwise improper. Mr. NESJE's
11 insurance at all relevant times was the Labor & Industries Washington State insurance.

12 5.38 Prior to surgical procedures performed by DR. DREYER, Mr. NESJE's personal
13 medical history included comorbidity conditions that are generally considered contraindications
14 when contemplating spine surgery, including that he weighed over 300 pounds (with a BMI over
15 40), chewed tobacco, and had sleep apnea. Further, Mr. NESJE was only 34 years old at the time
16 of the surgery.

17 5.39 In or around the summer of 2014, Mr. NESJE consulted with PROVIDENCE via
18 its agent / employee JASON A. DREYER, DO at SMMC because he was experiencing lower back
19 pain.

20 5.40 Dr. DREYER informed Mr. NESJE that he needed a three-level fusion surgery (L3
21 to L4, L4 to L5, and L5 to S1), that Dr. DREYER could fix him without a problem and that, within
22 six months, Mr. NESJE would be back to work functioning at a one hundred percent capacity.

23 5.41 Upon information and belief, at least two of the fusions (L3 to L4 and L5 to S1)

1 were medically unnecessary, making this an overly complex surgery that was not indicated.

2 5.42 Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, Mr.
3 NESJE agreed to the three-level fusion lumbar surgery. This surgery was conducted on or about
4 August 14, 2014. The surgery was unsuccessful, and he was unable to return to work.

5 5.43 Upon information and belief, this was a medically unnecessary or otherwise
6 improper procedure that was part of a pattern and practice of PROVIDENCE via its agent /
7 employee JASON A. DREYER, DO, to perform such unnecessary/improper procedures for the
8 purpose of financial gain, resulting in foreseeable, permanent damages to Mr. NESJE.

9 5.44 Mr. NESJE tried to follow all of Dr. DREYER's post-surgery instructions but
10 ended up in the hospital for three days because he was unable to get his pain under control. He had
11 to order a special chair because he could hardly move. He had a screw break a month after surgery;
12 Dr. DREYER informed him not to worry, and that it happened in 90 percent of all Dr. DREYER's
13 patients. Mr. NESJE was unable to get relief in his post-surgery care, other than briefly, with pool
14 therapy. When Mr. NESJE saw Dr. DREYER again, he learned he had another broken screw. Dr.
15 DREYER assured him that he would get better.

16 5.45 On or about July 12, 2016, Mr. NESJE consulted with Dr. Matthew Fewel, a
17 neurosurgeon in Richland, Washington at the time. Dr. Fewel recommended a possible revision
18 surgery as a result of placement of unnecessary failed hardware by Dr. DREYER, but only after
19 further workup, after Mr. NESJE stopped tobacco use and other pain medications used for pain
20 management. Other consultations done after weight loss and quitting tobacco placed chances for
21 successful revision surgery very low.

22 5.46 Upon information and belief, Mr. NESJE was one of many former patients of Dr.
23 DREYER and PROVIDENCE who sought a second opinion from Dr. Fewel to obtain relief from

1 these medically unnecessary, overly complex or otherwise improper surgeries. Upon information
2 and belief, after multiple consultations with former PROVIDENCE/DREYER patients, Dr. Fewel
3 was able to identify a pattern of misconduct and negligence.

4 5.47 On or about March 4, 2019, Dr. Fewel reported Dr. DREYER to the WDOH for
5 this pattern of medically unnecessary, overly complex, or otherwise improper surgeries. Per Dr.
6 Fewel's report, it had become clear to him that these improper surgeries were not an "isolated
7 occurrence" and he had begun to keep a record of patients he encountered from Providence /
8 SMMC and that he was limiting his report to WDOH to the 11 most egregious cases.

9 5.48 EBEN NESJE's file was among the 11 patient cases that Dr. Fewel reported.

10 5.49 Upon information and belief, Dr. Fewel's report resulted in the opening of a WDOH
11 investigation which resulted in the reporting by WDOH expert Abhineet Chowdhary regarding
12 serious concerns about JASON DREYER that resulted in the restriction of DR. DREYER's
13 medical license in March 2021. Dr. DREYER's license remains restricted to this day.

14 5.50 Dr. Chowdhary reported Mr. NESJE's file as one of the top seven files reported by
15 him to WDOH as grounds for restricting Dr. DREYER's medical license in March 2021.

16 5.51 Dr. Chowdhary's conclusion, based on the records he reviewed, was that there had
17 been a "departure from the standard of care for performing extensive spine surgery without clear
18 indications" for Mr. NESJE's surgery.

19 5.52 As a result of this unnecessary and otherwise improper surgery, Mr. NESJE has
20 suffered and continues to suffer general and special permanent damages, including but not limited
21 to: job loss (from Washington Fish and Wildlife Department); a designation of disability (SSD)
22 with a designation of depression and anxiety due to the surgery; a diagnosis of Failed Back Surgery
23 Syndrome; constant low back pain and discomfort and partial leg pain; significant difficulty

1 walking; inability to sleep, sit or stand for any period of time; fatigue; anxiety, and depression. He
2 is on antidepressants and pain medication daily.

3 5.53 Prior to April 12, 2022, Mr. NESJE was unaware of PROVIDENCE's admission
4 of salient facts as outlined herein and in its settlement with the DOJ.

5 5.54 Upon information and belief, on a more likely than not basis, the damage done by
6 PROVIDENCE and JASON A. DREYER, DO to Mr. NESJE is permanent and irreversible.

7 **KIRK SUMMERS**

8 5.55 Plaintiff KIRK SUMMERS, now 56 years old, was a patient of PROVIDENCE at
9 SMMC, whose surgery was negligent, medically unnecessary, or otherwise improper. Mr.
10 SUMMERS' insurance at all relevant times was Washington State insurance (Molina).

11 5.56 Prior to surgical procedures performed by DR. DREYER, Mr. SUMMERS'
12 personal medical history included comorbidity conditions that are generally considered
13 contraindications when contemplating spine surgery, including that he is a smoker and has a heart
14 murmur.

15 5.57 In or around early 2015, Mr. SUMMERS consulted with PROVIDENCE via its
16 agent / employee JASON A. DREYER, DO at SMMC because he was experiencing lower back
17 pain after straining it at work, shoeing horses.

18 5.58 Dr. DREYER informed Mr. SUMMERS that he needed back surgery, that Dr.
19 DREYER could make Mr. SUMMERS as good as new, and that he would be back shoeing horses
20 within 90 days.

21 5.59 Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, Mr.
22 SUMMERS agreed to a two-level fusion lumbar surgery. This surgery was conducted on or about
23 February 25, 2015.

1 5.60 Mr. SUMMERS woke up from the surgery in agonizing pain. He had nerve pain in
2 his lower back and into his legs. He lost complete use of his left leg. Dr. DREYER responded by
3 saying he did not know what the problem was because he had fixed everything when he was doing
4 the surgery. Ultimately, Dr. DREYER sought to put Mr. SUMMERS in a rehabilitation facility.
5 Mr. SUMMERS refused, obtained a walker to be able to get discharged, and pushed himself to the
6 limits of pain to get released from the hospital. This pain has never stopped.

7 5.61 Upon information and belief, this was a medically unnecessary or otherwise
8 improper procedure that was part of a pattern and practice of PROVIDENCE via its agent /
9 employee JASON A. DREYER, DO, to perform such unnecessary/improper procedures for the
10 purpose of financial gain, resulting in foreseeable, permanent damages to Mr. SUMMERS.

11 5.62 While Mr. SUMMERS was dealing with lumbar pain, Dr. DREYER assured Mr.
12 SUMMERS his lumbar condition would improve in time. Dr. DREYER further convinced Mr.
13 SUMMERS to have a two-level cervical spine surgery. At the time, Mr. SUMMERS felt some
14 tingling in his hands. Dr. DREYER assured Mr. SUMMERS that he could fix him and make him
15 as good as new. At no time did Dr. DREYER recommend conservative care or nerve blocks to
16 determine the origin of his hand tingling.

17 5.63 Based on, and in reliance of, the advice and stated opinions of Dr. DREYER, Mr.
18 SUMMERS agreed to the two-level fusion cervical surgery Dr. DREYER recommended. This
19 surgery was conducted on or about July 25, 2015. Following this surgery, Mr. SUMMERS no
20 longer is able to lift his arms above his head without pain and numbness.

21 5.64 Upon information and belief, this was a medically unnecessary or otherwise
22 improper procedure that was part of a pattern and practice of PROVIDENCE via its agent /
23 employee JASON A. DREYER, DO, to perform such unnecessary/improper procedures for the
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1 purpose of financial gain, resulting in foreseeable, permanent damages to Mr. SUMMERS.

2 5.65 Upon information and belief, in or around 2018, Mr. SUMMERS consulted with
3 Dr. Matthew Fewel, a neurosurgeon in Richland, Washington at the time. Dr. Fewel recommended
4 no additional surgery.

5 5.66 Upon information and belief, Mr. SUMMERS was one of many former patients of
6 Dr. DREYER and PROVIDENCE who sought a second opinion from Dr. Fewel to obtain relief
7 from these medically unnecessary or otherwise improper surgeries. Upon information and belief,
8 after multiple consultations with former PROVIDENCE/DREYER patients, Dr. Fewel was able
9 to identify a pattern of misconduct and negligence.

10 5.67 On or about March 4, 2019, Dr. Fewel reported Dr. DREYER to the WDOH for
11 this pattern of medically unnecessary, overly complex, or otherwise improper surgeries. Per Dr.
12 Fewel's report, it had become clear to him that these improper surgeries were not an "isolated
13 occurrence" and he had begun to keep a record of patients he encountered from Providence /
14 SMMC and that he was limiting his report to WDOH to the 11 most egregious cases.

15 5.68 KIRK SUMMERS' file was among the 11 patient cases that Dr. Fewel reported.

16 5.69 Upon information and belief, Dr. Fewel's report resulted in the opening of a WDOH
17 investigation which resulted in the reporting by WDOH expert Abhineet Chowdhary regarding
18 serious concerns about JASON DREYER that resulted in the restriction of DR. DREYER's
19 medical license in March 2021. Dr. DREYER's license remains restricted to this day.

20 5.70 Dr. Chowdhary reported Mr. SUMMERS' file as one of the top six files reported
21 by him to WDOH as grounds for restricting Dr. DREYER's medical license in March 2021.

22 5.71 Dr. Chowdhary's conclusion, based on the records he reviewed, was that there had
23 been a "departure from the standard of care for performing extensive spine surgery without clear

1 indications” for Mr. SUMMERS’ surgeries.

2 5.72 As a result of these unnecessary and otherwise improper surgeries, Mr. SUMMERS
3 has suffered and continues to suffer general and special permanent damages, including but not
4 limited to: weight loss (from a healthy 195 pounds down to an unhealthy 130 pounds); inability to
5 work (he will be applying for disability benefits); no independent income; constant pain and
6 discomfort; difficulty walking (he uses a cane most of the time); inability to sleep, sit or stand for
7 any period of time; fatigue; anxiety, and depression. He relies on oxycodone simply to try to
8 tolerate his extensive pain since undergoing surgery by Dr. DREYER.

9 5.73 Prior to April 12, 2022, Mr. SUMMERS was unaware of PROVIDENCE’s
10 admission of salient facts as outlined herein and in its settlement with the DOJ.

11 5.74 Upon information and belief, on a more likely than not basis, the damage done by
12 PROVIDENCE and JASON A. DREYER, DO to Mr. SUMMERS is permanent and irreversible.

13 **STEVEN BASH AND CHRISTINE BASH**

14 5.75 STEVEN BASH, the deceased, married to CHRISTINE BASH, was a patient of
15 JASON A. DREYER, DO at PROVIDENCE at SMMC.

16 5.76 Mr. BASH underwent three (3) surgeries – all conducted by DR. DREYER.

17 5.77 Upon information and belief, these surgeries – and, at a minimum, the second and
18 third surgeries – were negligent, medically unnecessary, or otherwise improper.

19 5.78 Mr. BASH’s government-paid medical costs were a part of the Settlement
20 Agreement restitution or would have been if the DOJ and PROVIDENCE had not settled.

21 5.79 Upon information and belief, Mr. BASH’s insurance at all relevant times was
22 through the L&I federal insurance system (that is, the Office of Workers Compensation).

23 5.80 Prior to surgical procedures performed by DR. DREYER, Mr. BASH’s personal
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1 medical history included comorbidity conditions that are generally considered contraindications
2 when contemplating spine surgery, including that he was a smoker and including his condition of
3 opioid dependence due to every-day use, a condition he sought to control.

4 5.81 Upon information and belief, Mr. BASH began consulting with Dr. DREYER in
5 2014 through 2016 after a work-related injury resulted in a combination of leg/groin and back pain,
6 with radiating leg pain being greater than or equal to 75% of his symptoms. Upon information
7 and belief, Dr. DREYER did not have a third-party present to assist Mr. BASH in making informed
8 consent decisions to any treatment recommendations made by Dr. DREYER, even though Dr.
9 DREYER knew or should have known that Mr. BASH's contraindications, including opioid
10 dependence, would more likely than not interfere with his ability to give informed consent.

11 5.82 *As to the first surgery:* Upon information and belief, Dr. DREYER initially
12 recommended conservative care before surgery and then recommended, and performed, a one-
13 level microdiscectomy of L2-L3 and a laminectomy of L3-L4, both of which Dr. DREYER termed
14 "minimally invasive."

15 5.83 Upon information and belief, based on, and in reliance of, the advice and stated
16 opinion of Dr. DREYER, Mr. BASH agreed to the surgery.

17 5.84 This surgery took place in or around October 2014. After this surgery, upon
18 information and belief, Mr. BASH was in consistent pain, and no longer could sleep well because
19 of the pain.

20 5.85 Upon information and belief, this surgery was the first step towards subsequent
21 surgeries; it was the start of Mr. BASH becoming one of Dr. DREYER's repeat, multiple-surgery
22 victims; and it became a part of a pattern and practice of PROVIDENCE via its agent / employee
23 JASON A. DREYER, DO, to perform negligent, medically unnecessary, or otherwise improper

1 procedures for the purpose of financial gain, ultimately resulting in foreseeable, permanent
2 damages to Mr. BASH, and to the ESTATE OF STEVEN BASH, and to CHRISTINE BASH,
3 individually as Mr. BASH's surviving wife, and as personal representative of the ESTATE OF
4 STEVEN BASH.

5 5.86 *As to the second surgery:* Upon information and belief, Dr. DREYER determined
6 that Mr. BASH was doing "poorly;" stated that his issues were "as bad, if not worse than before
7 surgery;" and proposed the following extensive and radical surgery despite the comment of Derek
8 Sucharda, Dr. DREYER's PA-C at the time, that Mr. BASH was "quite young to have such a large
9 surgery": an anterior lumbar interbody arthrodesis, L1-2, L2-3, L3-4 from the lateral approach;
10 postereolateral arthrodesis, L1-2, L2-3, L3-4; combined posterior interbody and posterolateral
11 arthorodesis, L4-5, L5-S1; PEEK interbody L1-2, L2-3, L3-4, L4-5, L5-S1; posterior spinal
12 instrumentation, L1-S1; and laminectomies L1, L2, L3, L4, L5, S1 for decompression. Upon
13 information and belief, Dr. DREYER proposed this surgery as treatment for the images but not the
14 patient and failed to take proper (or any) steps to determine the risk assessment to such an extensive
15 surgery and/or to determine the origins/generators of Mr. BASH's pain and discomfort before
16 proposing such an extensive and invasive surgery.

17 5.87 Upon information and belief, Dr. DREYER did not have a third-party present to
18 assist Mr. BASH in making informed consent decisions to any treatment recommendations made
19 by Dr. DREYER, even though Dr. DREYER knew or should have known that Mr. BASH's
20 contraindications, including opioid dependence, would more likely than not interfere with his
21 ability to give informed consent.

22 5.88 Upon information and belief, based on, and in reliance of, the advice and stated
23 opinion of Dr. DREYER, Mr. BASH agreed to the surgery.

1 5.89 This surgery took place in or around January 2016. Upon information and belief,
2 Mr. BASH woke up from this surgery screaming and crying, in unbearable pain.

3 5.90 Upon information and belief, this was a negligent, medically unnecessary, or
4 otherwise improper procedure that was part of a pattern and practice of PROVIDENCE via its
5 agent / employee JASON A. DREYER, DO, to perform such unnecessary/improper procedures
6 for the purpose of financial gain, ultimately resulting in permanent damages to Mr. BASH, and to
7 the ESTATE OF STEVEN BASH, and to CHRISTINE BASH, individually as Mr. BASH's
8 surviving wife and as personal representative of the ESTATE OF STEVEN BASH.

9 5.91 *As to the third surgery:* Upon information and belief, in response to Mr. BASH
10 having pain on his right side, Dr. DREYER stated there was a broken screw on the left side of Mr.
11 BASH's spine as a result of the earlier surgery, and proposed and/or performed the following
12 surgery to remove the broken screw (despite its location on the left, not right, side): posterolateral
13 arthrodesis L4-5, L5-S1; posterior spinal instrumentation L4-S1; laminectomy L4, L5, S1 for the
14 purpose of decompression.

15 5.92 Upon information and belief, Dr. DREYER did not have a third-party present to
16 assist Mr. BASH in making informed consent decisions to any treatment recommendations made
17 by Dr. DREYER, even though Dr. DREYER knew or should have known that Mr. BASH's
18 contraindications, including opioid dependence, would more likely than not interfere with his
19 ability to give informed consent.

20 5.93 Upon information and belief, based on, and in reliance of, the advice and stated
21 opinion of Dr. DREYER, Mr. BASH agreed to the surgery.

22 5.94 This surgery took place in or around August 2016.

23 5.95 Upon information and belief, this was a negligent, medically unnecessary, or
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1 otherwise improper procedure that was part of a pattern and practice of PROVIDENCE via its
2 agent / employee JASON A. DREYER, DO, to perform such unnecessary/improper procedures
3 for the purpose of financial gain, ultimately resulting in permanent damages to Mr. BASH, and to
4 the ESTATE OF STEVEN BASH, and to CHRISTINE BASH, individually as Mr. BASH's
5 surviving wife and as personal representative of the ESTATE OF STEVEN BASH.

6 5.96 Upon information and belief, as a direct result of this ongoing pattern of medically
7 unnecessary or otherwise improper surgeries, Mr. BASH suffered general and special permanent
8 damages, including but not limited to increasing and debilitating pain in his back and legs, all of
9 which forced him to take increasing amounts of pain medication despite his attempts to reduce
10 those medications, including the following by 2017: use and increased use of Fentanyl patches (a
11 treatment Mr. BASH had been able to taper off prior to the first surgery by Dr. DREYER);
12 hydrocodone; gabapentin (a pain medication Mr. BASH had attempted to discontinue); naprosyn;
13 and carbidopa-levodopa for newly onset restless leg syndrome, as well as anti-depressant/anti-
14 anxiety medications. Upon information and belief, medical records show Mr. BASH's attempts
15 to reduce pain medication, including the Fentanyl patch, only to return to his treating provider
16 seeking pain relief and treatment, with his restless leg syndrome symptoms returning without use
17 of the Fentanyl patch. Mr. BASH even sought advice to obtain the help of a service animal.

18 5.97 On or about May 4, 2017, over a year after his second surgery and about nine
19 months from his third surgery, his treating physician Dr. John Hoehn concluded:

20 This patient lives with chronic, incurable, severe pain that interferes with the activities of
21 living. Non-narcotic medications are ineffective or otherwise contraindicated. Patient has
22 accepted the risks and side effects of narcotics for the benefit of improved quality of life.
23 The patient and I know of no other available safe or effective alternatives. This is not for
cure, but for maintenance therapy. I have seen no evidence of inappropriate or illegal use
of these narcotics, and am willing to permit the patient to use them on an ongoing basis
with my medical supervision.

1 with Dr. JASON DREYER instead, with his wife present.

2 5.103 At the consultation, Dr. DREYER showed Mr. SUMERLIN an isolated place on
3 his images as causing the issue. Dr. DREYER proposed surgery the next day, with no discussion
4 on conservative care options and despite the fact that there was no emergent situation requiring
5 immediate surgery. Based on Dr. DREYER's description, Mr. SUMERLIN understood the surgery
6 to be a simple procedure.

7 5.104 After the consultation, as MARYANN SUMERLIN and the PA-C were exiting the
8 room, Dr. DREYER asked to speak to Mr. SUMERLIN privately. He firmly told Mr. SUMERLIN
9 that there were more problems with his spine and that he, Dr. DREYER, wanted to take care of
10 them now so that Mr. SUMERLIN would not have to return. Mr. SUMERLIN believed he had to
11 do the surgery because Dr. DREYER was so firm about it. Dr. DREYER did not inform Mr.
12 SUMERLIN that this additional surgery would result in the fusion of six levels, C3 through T1,
13 both anterior and posterior. Dr. DREYER did not discuss conservative care options and proposed
14 surgery the next day despite the fact there was no emergent situation requiring immediate surgery.

15 5.105 Mr. SUMERLIN was handed an informed consent form to sign but no medical
16 professional, including Dr. DREYER, reviewed the form with Mr. SUMERLIN.

17 5.106 Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, and
18 without understanding the extent of the surgery, Mr. SUMMERLIN agreed to the surgery.

19 5.107 Mr. SUMERLIN's cervical surgery took place on January 20, 2020. It was a five-
20 hour surgery, anterior only. According to operating room notes, the O-Arm (a mechanical device
21 used by Dr. DREYER in surgeries) malfunctioned and Dr. DREYER ultimately halted the surgery
22 midway through, accomplishing the anterior portion of the surgery only. This long surgery put Mr.
23 SUMERLIN at greater risk for infection.

1 5.108 Mr. SUMERLIN's cervical surgery continued on January 22, 2020, to accomplish
2 the posterior portion of the surgery, again putting Mr. SUMERLIN at greater risk for infection.

3 5.109 Upon information and belief, these were medically unnecessary or otherwise
4 improper procedures that was part of a pattern and practice of PROVIDENCE via its agent /
5 employee JASON A. DREYER, DO, that was then continued at MULTICARE, to perform such
6 unnecessary/improper procedures for the purpose of financial gain, resulting in foreseeable,
7 permanent damages to Mr. SUMERLIN.

8 5.110 Upon information and belief, these medically unnecessary or otherwise improper
9 procedures more likely than not were a proximate cause of a MRSA infection subsequently
10 suffered by Mr. SUMERLIN (as described below) and further, that the MRSA infection went
11 undiagnosed and untreated for months due to Dr. DREYER's improper actions and inactions.

12 5.111 After surgery, Mr. SUMERLIN returned to Dr. DREYER to remove staples. When
13 the staples were removed, Mr. SUMERLIN had significant seepage and drainage coming from the
14 wound. Mr. SUMERLIN's wound did not heal and he returned to Dr. DREYER to seek treatment.
15 Upon information and belief, Dr. DREYER failed to obtain a formal infectious disease referral
16 which would have resulted in proper cultures being taken and Mr. SUMERLIN would have been
17 diagnosed at an earlier stage as having the highly dangerous MRSA³ (which he had). Instead, Dr.
18 DREYER attempted debridements and treated what he called a "seroma" (accumulation of fluid
19 under the skin) with antibiotics (even though seromas are generally not treated that way) and he
20 also prescribed Keflex (which is not effective against MRSA). Dr. DREYER's treatment of Mr.
21 SUMERLIN's infection fell below the standard of care. Mr. SUMERLIN's wound continued not
22

23 ³ MRSA stands for Methicillin-resistant staphylococcus aureus. Left untreated, MRSA infections can become severe
24 and cause sepsis.

1 to heal.

2 5.112 September 28, 2020, Mr. SUMERLIN was finally diagnosed with MRSA, and this
3 was done in a clinic in Walla Walla, Washington, where he lived, upon Mr. SUMERLIN's
4 insistence, and not by Dr. DREYER. The failure to follow proper infectious disease care protocols
5 and obtain cultures of the wound, resulted in the late diagnosis which more likely than not resulted
6 in a greater infection that was left to fester and grow all summer.

7 5.113 Upon the MRSA diagnosis, Mr. SUMERLIN returned immediately to Spokane
8 (since he located no surgeon in Walla Walla who was willing to take on treating the MRSA
9 infection in his spine) and Dr. DREYER again performed surgery to remove the infected issue/
10 MRSA, thereby removing a large chunk of Mr. SUMERLIN's neck and vertebrae in the process.

11 5.114 As a result of the unnecessary and otherwise improper surgeries in January 2020,
12 as well as subsequent improper care, Mr. SUMERLIN has suffered and continues to suffer general
13 and special permanent damages, including but not limited to: a great divot permanently exists in
14 the back of his neck where Dr. DREYER performed surgery to remove the MRSA; this divot is
15 quite tender and hurts on a daily basis; he has an ongoing, extreme pain on the right side of his
16 neck, from top to bottom, as if his neck is in a vice; he has difficulty with choking when he eats
17 and has problems swallowing at times; if he coughs too much, he gets a massive amount of phlegm
18 in his throat and his nose drains excessively; it affects his ability to drive because he cannot move
19 his head to watch for traffic; he has depression and anxiety as a result of this, and is on anti-
20 depressants.

21 5.115 Prior to April 12, 2022, Mr. SUMERLIN was unaware of PROVIDENCE's
22 admission of salient facts as outlined herein and in its settlement with the DOJ, including that it
23 failed to report Dr. DREYER to the WDOH or the NPDB.

1 failure at L5-S1.

2 5.122 On or about August 28, 2019, Dr. DREYER redid Dr. Morgan's original surgery
3 removing all the hardware, and he then conducted a fusion that was both anterior and posterior for
4 Levels L3 through S1, even though only L5-S1 was the concerning level. The extent of hardware
5 removed and the further hardware placement both anterior and posterior were not necessary. This
6 resulted in an extensive surgery that was not fully indicated.

7 5.123 After this August 28, 2019, surgery by Dr. DREYER, Mr. WHITNEY's condition
8 worsened, although he was still able to do some activities occasionally, like driving a tractor,
9 hunting, and fishing.

10 5.124 Dr. DREYER informed the WHITNEYs that he could fix the issues that arose with
11 this 8/28/2019 surgery (Dr. DREYER's first surgery).

12 5.125 Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, Mr.
13 WHITNEY agreed to a second surgery by Dr. DREYER on February 24, 2020.

14 5.126 On or about February 24, 2020, Dr. DREYER again removed and replaced screws
15 and also decompressed L2-L3 with plate placement at L2-L3, even though the imaging did not
16 indicate a need for removal and replacement of hardware/screws, nor a need for L2-L3
17 decompression with plate placement.

18 5.127 After this second surgery by Dr. DREYER on 2/24/2020, Mr. WHITNEY was
19 mostly bedridden, though he could still drive himself to appointments.

20 5.128 On or about July 20, 2020, Dr. DREYER recommended and performed his third
21 surgery to remove the L2-L3 plate/hardware that he had placed unnecessarily during the February
22 24, 2020, surgery.

23 5.129 Based on, and in reliance of, the advice and stated opinions of Dr. DREYER, Mr.

1 WHITNEY agreed to the July 20, 2020 surgery by Dr. DREYER, believing it was necessary.

2 5.130 After the July 20, 2020 surgery by Dr. DREYER, Mr. WHITNEY was bedridden
3 and could not even drive himself to appointments.

4 5.131 Upon information and belief, all these surgeries were overly extensive, medically
5 unnecessary or otherwise improper procedures that was part of a pattern and practice of
6 PROVIDENCE via its agent / employee JASON A. DREYER, DO, that was then continued at
7 MULTICARE, to perform such unnecessary/improper procedures for the purpose of financial
8 gain, resulting in foreseeable, permanent damages to Mr. WHITNEY, with all work by Dr.
9 DREYER other than L5-S1 revision on 8/28/2019 surgery and especially taking into account
10 numerous multiple level fusions both anterior and posterior approaches, in a patient with Mr.
11 WHITNEY's comorbidities.

12 5.132 As a result of these overly complex, unnecessary and otherwise improper surgeries,
13 Mr. WHITNEY has suffered and continues to suffer general and special permanent damages,
14 including but not limited to: he is primarily bedridden; he no longer drives himself to 90 percent
15 of his medical appointments; he no longer goes to the Rock & Gym Club in Chewelah, even just
16 to watch his friends; he walks with a cane or uses a scooter; he no longer can go hunting or fishing
17 or use his tractor; he no longer can engage in other hobbies such as repairing vehicles; he is on
18 heavy pain medication daily, including buprenorphine naloxone and muscle relaxers, to try to
19 manage the pain; his son has moved to Chewelah from Florida to help his parents because his wife,
20 SHERRYL WHITNEY is unable to manage Mr. WHITNEY's care alone.

21 5.133 Prior to April 12, 2022, Mr. WHITNEY was unaware of PROVIDENCE's
22 admission of salient facts as outlined herein and in its settlement with the DOJ, including that it
23 failed to report Dr. DREYER to the WDOH or the NPDB.

1 5.134 Upon information and belief, on a more likely than not basis, the damage done by
2 PROVIDENCE and JASON A. DREYER, DO to Mr. WHITNEY is permanent and irreversible.

3 **VI. MAINTENANCE OF THE CLASS**

4 6.1. Plaintiffs, on behalf of themselves and those similarly situated, reallege and
5 incorporate by reference paragraphs 1.1 through 5.92 as if fully set forth herein.

6 6.2. **Patient Class Definitions:**

7 6.2.1. **Settlement Class.** Settlement Plaintiffs bring this Class action pursuant to
8 Washington CR 23(b)(2), (b)(3), and (c)(4)⁴ on behalf of the Settlement Class defined as
9 follows: *All patients whose treatments informed the basis of the settlement between*
10 *PROVIDENCE and DOJ (quantified for settlement purposes as \$22,690,458, with*
11 *\$10,459,388 designated as restitution for settlement purposes), who, by definition, suffered*
12 *special and/or general injury or damages from medical procedures that were medically*
13 *unnecessary or otherwise improper for said treatments.*

14 6.2.2. **Non-Settlement Class/PROVIDENCE.** Plaintiffs bring this Class action
15 pursuant to Washington CR 23(b)(2), (b)(3), and (c)(4) on behalf of the Non-Settlement
16 Class/Providance defined as follows: *All patients who suffered injury or damages as a*
17 *result of medical procedures at PROVIDENCE, performed by Dr. JASON A. DREYER,*
18 *DO and/or Dr. DANIEL ELSKENS DO that were medically unnecessary or otherwise*
19 *improper but whose treatments were not included in the settlement either because DOJ*
20 *offered to settle for less than full restitution or because their treatment was paid for by*

21
22
23 ⁴ Reference to Washington Rule 23 should include reference to Fed. R. Civ. P. 23; rules are
24 similar and applicable.

1 *private health insurers such as Regence Blue Shield, or was paid privately, for treatments*
 2 *during the relevant time periods.*

3 6.2.3. **Non-Settlement Class/MULTICARE.** Plaintiffs bring this Class action
 4 pursuant to Washington CR 23(b)(2), (b)(3) and (c)(4) on behalf of the Non-Settlement
 5 Class/MultiCare defined as follows: *All patients who suffered injury or damages as a result*
 6 *of medical procedures at MULTICARE performed by Dr. JASON A. DREYER, DO that*
 7 *were medically unnecessary or otherwise improper but whose treatments were not*
 8 *included in the restitution settlement because DOJ sought reimbursement for payments to*
 9 *PROVIDENCE only, for treatments during the relevant time periods.*

10 6.2.4. Plaintiffs reserve the right to modify or amend the definitions of the
 11 proposed Classes and/or to add Subclasses if necessary before the Court determines
 12 whether certification is appropriate and as the Court may otherwise allow, including a
 13 subclass of vulnerable adults and/or for estates and/or for survival actions (claims already
 14 preserved herein).

15 6.3. **Numerosity:** The Department of Justice has estimated that the victims of these
 16 medically unnecessary or otherwise improper surgeries conducted by these neurosurgeons number
 17 in the “hundreds.” Hill, supra. Putative members of the class cannot be identified without the
 18 assistance of the DOJ and/or PROVIDENCE due to the fact that specifics are known only to them;
 19 further, **due to HIPAA privacy restrictions which prevent complete uninhibited disclosure of**
 20 **entitled Plaintiffs;** as such, the Class is so numerous that joinder of all members is impracticable.

21 6.4. The cost of surgeries is unknown but, upon information and belief, it can be
 22 estimated on average to be over \$100,000.00 per patient. *The subject loss has been at least*
 23 *\$10,459,388, confirming that the Class is so numerous that joinder of all members is impracticable.*

1 6.4.1. A substantial majority of each of the foregoing patient classes is comprised
2 of residents of the state of Washington, that is, more than two-thirds of the patients; and,
3 their principal injuries resulted from conduct of the DEFENDANTS which conduct, and
4 resulting injuries occurred within the state of Washington; claims are based upon state law,
5 and at least one defendant is a citizen of Washington.

6 6.4.2. **Settlement Class.** In settling the 2020 *qui tam* action, the DOJ agreed to a
7 settlement amount of \$22,690,458, with \$10,459,388 designated as restitution. Upon
8 information and belief, this amount was calculated based upon governmental payments
9 after contractual adjustments on submitted claims for settlement purposes (not the entire
10 amount). DOJ has identified “hundreds of patients” as affected, and it is unknown the
11 number of patients included in the restitution amount or the DOJ’s analysis therein, but it
12 is believed, upon information and belief, that the Class is so numerous that joinder of all
13 members is impracticable. As indicate in ¶ 6.3, prospective members of the class cannot be
14 identified without the assistance of the DOJ and/or PROVIDENCE due to the fact that
15 specifics are known only to them; further, due to HIPAA privacy restrictions which prevent
16 complete uninhibited disclosure of entitled Plaintiffs.

17 6.5. **Non-Settlement Class/PROVIDENCE.** As noted, the DOJ reported that there
18 were “hundreds” of victims of the PROVIDENCE scheme. The Class is so numerous that joinder
19 of all members is impracticable. As indicate in ¶ 6.3, prospective members of the class cannot be
20 identified without the assistance of the DOJ and/or PROVIDENCE due to the fact that specifics
21 are known only to them; further, due to HIPAA privacy restrictions which prevent complete
22 uninhibited disclosure of entitled Plaintiffs.

23 6.5.1. **Non-Settlement Class/MULTICARE.** As noted, the DOJ reported that
24

there were “hundreds” of victims of the PROVIDENCE scheme, which spanned approximately five (5) years. Upon information and belief, after leaving PROVIDENCE, Dr. JASON A. DREYER, DO worked for MULTICARE in Spokane for over two (2) years, affecting an unknown number of patients. Upon information and belief, The Class is so numerous that joinder of all members is impracticable. Moreover, Plaintiffs cannot identify Plaintiffs in the Class without the assistance of the DOJ and/or PROVIDENCE and/or other DEFENDANTS due to the fact that specifics are known only to them and due to HIPAA restrictions, which prohibit investigation to determine what patients have viable right of claims.

6.6. **Commonality:** This action involves common questions of law and fact which predominate over any questions affecting individual Class members, and which justify damages relief under Rule 23(b)(3), equitable relief under Rule 23(b)(2), and the resolution of particular issues under Rule 23(c)(4), including but not limited to:

6.6.1. Whether DEFENDANTS have engaged in criminal profiteering activity via multiple predicate acts of criminal profiteering under 9A.82.010(4), for financial gain actionable under RCW 9A.82.100 (Criminal Profiteering) or RCW 9A.82.080 including but not limited to hundreds of:

6.6.1.1 false health care claims as defined in RCW 48.80.030 (RCW 9A.82.010(hh));

6.6.1.2 money laundering offenses as defined in RCW 9A.83.020 (RCW 9A.82.010(t)); &

6.6.1.3 theft by deception as defined/applied in RCW 9A.56 (RCW 9A.82.010(e));

1 6.6.2 Whether DEFENDANTS’ profiteering activity via these multiple predicate
2 acts demonstrates a “pattern” of profiteering activity, as required by RCW 9A.82.100 (civil
3 RICO) and as defined in RCW 9A.82.010(12), including:

4 6.6.2.1 Actions taken having the same/similar intent – the intent was to
5 achieve and/or maintain financial gain, and the pattern of actions
6 taken include, e.g.:

7 6.6.2.1.1 submitting hundreds of false health care claims;

8 6.6.2.1.2 accepting hundreds of payments for those claims;

9 6.6.2.1.3 concealing actions taken to obtain these funds;

10 6.6.2.1.4 failing to repay any of the funds received; and

11 6.6.2.1.5 failing to report the neurosurgeons to NPDB or WDOH
12 as required by law (which would have resulted in
13 disgorgement of funds received);

14 6.6.2.2 Actions taken have the same or similar outcome / result; here the
15 result was to keep the funds obtained and conceal the bad acts of
16 neurosurgeons (by, inter alia, failing to return funds or report them
17 to NPDB or WDOH), which resulted in continued and perpetual
18 harm to unsuspecting past and future patients;

19 6.6.2.3 Same or similar accomplices – here, the DEFENDANTS;

20 6.6.2.4 Same or similar principals – here, the DEFENDANTS;

21 6.6.2.5 Same or similar victims – here, unsuspecting and trusting
22 individuals in need of specialized and honest health care treatment;

23 6.6.2.6 Same or similar methods of commission – here, the same pattern
24

and practice repeated itself for the entire relevant time period(s) consistently and throughout;

6.6.2.7 Otherwise interrelated by distinguishing characteristics, including nexus to the same enterprise – here, (1) one distinguishing characteristic includes a requirement in the medical profession, when seeking insurance coverage, to verify under penalties (including license revocation penalties) that the proposed medical procedures are medically necessary or are otherwise proper; and (2) The enterprises to which the “nexus” exists, see RCW 9A.82.010(8), are governmental health care payee entities like, *inter alia*, Medicare/Medicaid (which require the above-described assurances), and/or the health care insurance industry, including private insurance companies (which also require such assurances), or PROVIDENCE or Providence St. Joseph Health, or the association-in-fact of both;

6.6.3 Whether DEFENDANTS’ pattern of criminal profiteering activity was discovered for purposes of the statute of limitations under RCW 9A.82.100(7) (civil RICO) no sooner than April 12, 2022 (the date the DEFENDANTS first admitted publicly a pattern existed, requiring a \$22.7 million settlement);

6.6.4 Whether DEFENDANTS’ failure (PROVIDENCE’s failure in particular) to report the malfeasance of the neurosurgeons pursuant to RCW 70.41.210 was a violation of a statutory or common law duty to Plaintiffs resulting in general/special damages;

6.6.5 Whether the settlement between DOJ and PROVIDENCE of \$22,690,458

1 (with \$10,459,388 designated as restitution) creates a mechanism by which financial
2 damages for medical costs can be measured for all Plaintiffs (and/or for the Settlement
3 Class Plaintiffs), including as calculated pursuant to the Providence Corporate Integrity
4 Agreement, and in equitable remedies including disgorgement, and forfeiture;

5 6.6.6 Whether the settlement between DOJ and PROVIDENCE for a specific
6 settlement amount (\$22,690,458) and a specific amount designated for restitution
7 (\$10,459,388) creates a mechanism by which to quantify additional damages – i.e., these
8 are agreed-upon amounts regarding medically unnecessary and other improper procedures;
9 they form the basis of this class action; the question becomes whether these agreed-upon
10 medical costs can be used to quantify the remainder of damages for the classes of Plaintiffs
11 where the entire class or classes can be equitably adjudicated pursuant to the agreed-upon
12 markers;

13 6.6.7 Whether PROVIDENCE owed a common law or statutory duty of care to
14 all patients to report the actions of the neurosurgeons pursuant to RCW 70.41.210, resulting
15 in actionable lawsuits by all Plaintiffs against PROVIDENCE for failure to comply with
16 that statutory duty, resulting in reasonably foreseeable general/special damages;

17 6.6.8 Whether PROVIDENCE breached its duty to comply with the standard of
18 care of a hospital;

19 6.6.9 Whether DEFENDANTS exercised the requisite degree of skill, care and
20 learning expected of a reasonably prudent hospital/healthcare provider;

21 6.6.10 Whether DEFENDANTS fell below their professional standard of care;

22 6.6.11 Whether DEFENDANTS failed to obtain consent/informed consent that
23 surgery would not occur in a safe environment and that it included medically unnecessary
24

1 or otherwise improper procedures;

2 6.6.12 Whether Defendant violated the Consumer Protection Act (RCW 19.86);

3 6.6.13 Whether Defendant violated the Criminal Profiteering Act (RCW
4 9A.82.100 and 9A.82.080);

5 6.6.14 Whether Defendant concealed evidence forming the basis of this action
6 from its patients, from MULTICARE patients, and from the public during the relevant time
7 period until no sooner than April, 2022;

8 6.6.15 Whether nonmonetary relief is required to compensate Class members,
9 including disgorgement, forfeiture, restitution, divestment, injunctions, and civil penalties
10 that are appropriate to be brought or maintained as a class action under Rule 23(b)(2),

11 6.6.16 The nature and extent of Class-wide injury and the measure of
12 compensation for such injury.

13 6.6.17 The aforementioned common issues present particular questions
14 appropriate to be brought or maintained as a class action under Rule 23(c)(4).

15 **6.7 Typicality:** Class Plaintiffs' claims are typical of the claims of other members of
16 the Class and Class Plaintiffs are not subject to any atypical claims or defenses. DEFENDANTS
17 did not take reasonable steps to ensure that medically unnecessary or otherwise improper
18 procedures did not occur. DEFENDANTS sought/received payments for medically unnecessary
19 and other improper procedures. DEFENDANTS concealed their wrongdoing by e.g., (a) failing to
20 reimburse the enterprise health care industry and/or Medicare/Medicaid for payments for
21 procedures that did not meet criteria for reimbursement, were medically unnecessary, or were
22 otherwise improper; and (b) failing to report the neurosurgeons to the NPBD or the WDOH (which
23 would have resulted in disgorgement). DEFENDANTS failed to advise Plaintiffs of medically
24

unnecessary surgeries and otherwise improper procedures to which they were subjected. DEFENDANTS took repeated, similar actions as outlined in the commonality section, to which PROVIDENCE has admitted. Plaintiffs received the same notice, i.e., no sooner than the public announcement of the DOJ Settlement on April 12, 2022. Plaintiffs underwent similar medically unnecessary or otherwise improper procedures due to the schemes of DEFENDANTS that went unabated due to DEFENDANTS' negligence and concealment. Plaintiffs' claims like those of the Class, arise out of the same common course of conduct by Defendant directed toward Plaintiffs and the Class and are based on the same legal and remedial theories. Classes, and/or the Settlement Class, once identified, will have an additional, direct nexus to settlement/restitution amounts.

6.8 **Adequacy:** Class-Plaintiffs will fairly and adequately represent the Class, as they are committed to prosecuting this action, have no conflicts of interest, and have retained competent counsel who are experienced civil trial lawyers with significant experience in complex litigation and trial, including tort litigation. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class(es) and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests that are contrary to or that conflict with those of the proposed Class.

6.9 **Predominance:** The common issues predominate over any individualized issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

6.10 **Superiority:** Class-Plaintiffs and Class members have suffered and will continue to suffer harm and damages as a result of DEFENDANTS' actions. Absent a Class action, most Class members likely would find the cost of litigating their claims prohibitive and/or may not even become informed of their causes of action due to HIPAA confidentiality and how the details of

the settlement (and which cases inform the bases of the settlement agreement) are also currently held confidentially. Concentrating class members claims in this District is superior because the headquarters of Providence is located in this District and the claims are all based upon Washington law. Class treatment is superior to multiple individual suits or piecemeal litigation because it conserves judicial resources, promotes consistency and efficiency of adjudication, and provides a forum for all claims, which number in the “hundreds” (according to the Department of Justice). There will be no significant difficulty in the management of this case as a Class action. The identity of each Class member is readily identifiable from DEFENDANTS’ own records and the records of the DOJ. Unless this matter proceeds as a Class action, many patients who were injured by these DEFENDANTS may not otherwise learn how or why they were injured.

VII. CAUSE OF ACTION: Criminal Profiteering [RCW 9A.82.100 and 9A.82.080]

7.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 6.10 as if fully set forth herein.

7.2 Plaintiffs herein set forth their claim for damages resulting from DEFENDANTS’ violations of the Washington Criminal Profiteering Act, 9A.82.100 and 9A.82.080.

7.3 Each DEFENDANT is a “person” within the meaning of RCW 9A.04.110(17).

A. Violation of RCW 9A.82.100

7.4 DEFENDANTS violated RCW 9A.82.100, as further alleged herein, by knowingly engaging in a pattern of criminal profiteering activity as set forth in the preceding paragraphs by engaging in the following acts of criminal profiteering activity for financial gain (“predicate acts”) with a nexus to the identified health care insurance enterprises:

7.4.1 false health care claims as defined in RCW 48.80.030 (RCW 9A.82.010(hh));

7.4.2 money laundering as defined in RCW 9A.83.020 (RCW 9A.82.010(t));

7.4.3 theft by deception as defined/applied in RCW 9A.56 (RCW 9A.82.010(e)).

B. Violation of RCW 9A82.080(1) & (2)

7.5 DEFENDANTS violated RCW 9A82.080(1) & (2) , as further alleged herein, by:

(1) knowingly and willfully receiving the proceeds, directly or indirectly, from a pattern of criminal profiteering activity to use or invest any part thereof in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of the enterprise PROVIDENCE or the alternative enterprise(s); and (2) knowingly and willfully acquiring or maintaining, directly or indirectly, an interest in or control of the enterprise or real property through a pattern of criminal profiteering activity. Plaintiffs have been injured in their persons, property and business as a result of the DEFENDANTS' knowing receipt of the proceeds from the pattern of criminal profiteering activity and their subsequent use and investment, and concealment of their use and investment, in the enterprise of PROVIDENCE or the alternative enterprises, including for purposes of maintaining the enterprise(s) to attract patients and submit further false health care claims.

C. Violation of RCW 9A82.080(3)

7.6 DEFENDANTS violated RCW 9A82.080(3), as further alleged herein, by knowingly and willfully conspiring to commit the foregoing criminal profiteering acts and violations of RCW 9A.82.080(1) & (2), in violation of RCW 9A.82.080(3).

7.7 Each plaintiff is a person who sustained injury to his or her person, business, or property by an act of criminal profiteering that is a part of a pattern of criminal profiteering activity under RCW 9A82.100, or by the offenses alleged in RCW 9A82.080(1), (2) & (3).

7.8 Plaintiffs' injuries were directly and proximately caused by Defendants' violations

1 of the aforementioned offenses.

2 7.9 As to each of the following predicate offenses, failure by DEFENDANTS to return
3 funds obtained as described below is evidence of the intent to commit the predicate act(s) and are
4 part of the pattern of criminal profiteering activity alleged herein.

5 **Predicate Acts**
6 **False Health Care Claims, RCW 48.80.030**

7 7.10 As set forth herein above, DEFENDANTS:

8 7.10.1 presented and/or caused to be presented to health care payers hundreds of
9 claims for a health care payment knowing the claim to be false and/or that falsely
10 represented that the goods or services were medically necessary in accordance with
11 professionally standards; and/or

12 7.10.2 concealed or failed to disclose information with intent to obtain health
13 care payments to which they were not entitled, including but not limited to false
14 certifications of medical necessity and failure to disclose noncompliance with 42 U.S.C.
15 § 11133(a)(1) of the Healthcare Quality Improvement Act of 1986, and the NPDB
16 guidelines.

17 7.11 These acts constituted false health care claims in violation of RCW 48.80.030.

18 **Predicate Acts**
19 **Money Laundering, RCW 9A.83.020(1)(a) &(b)**

20 7.12 As set forth herein above: DEFENDANTS conducted or attempted to conduct
21 financial transactions (to wit, receiving and depositing health care payments) involving the
22 proceeds of specified unlawful activity (to wit, false health care claims, in violation of RCW
23 48.80.030, and theft by deception under RCW 9A.56.030 and 9A.56.040) knowing the property
24 was proceeds of that specified unlawful activity. Further, the use of these unlawful proceeds to

1 purchase real estate violates RCW 9A.82.080(1), as does the investment of these proceeds to
 2 promote further health care fraud proceeds, including through compensation. In addition,
 3 Defendants knew that the transactions with Plaintiff's health care payors (*i.e.*, Medicare) were
 4 designed in whole or in part to conceal or disguise the nature, location, source, ownership, or
 5 control of the proceeds of specified unlawful activity, and acted recklessly as to whether the
 6 property was proceeds of specified unlawful activity.

7 7.13 These acts constitute money laundering in violation of RCW 9A.83.020(1)(a)&(b).

8 **Predicate Acts**
 9 **Theft by Deception, RCW 9A.56.030**

10 7.14 As set forth herein above: DEFENDANTS, with the intent to defraud patient class
 11 members, the health insurance industry and/or governmental insurance entities (e.g.,
 12 Medicare/Medicaid), wrongfully obtained property (to wit, financial payments of false health care
 13 claims) by knowingly misrepresenting information about the health care provided, the medical
 14 necessity of it, and/or other improper issues, with the intent to deprive them of that property.

15 7.15 The property or services described herein exceed \$750 in value.

16 7.16 These acts constituted theft in the first or second degree, in violation of RCW
 17 9A.56.030.

18 **Pattern of Related Profiteering Acts**

19 7.17 DEFENDANTS engaged in a pattern of related criminal profiteering offenses, as
 20 described in this claim, repeatedly and continuously during the relevant time period, including
 21 three or more acts of profiteering violations of RCW 9A.56.030, RCW 48.80.030, and
 22 9A.83.020(1)(a) & (b).

23 7.18 The multiple acts of profiteering activity had the same or similar intents, results,
 24 accomplices, victims, and methods of commission. Alternatively, they are otherwise interrelated

1 by distinguishing characteristics, and these characteristics include a nexus to the same enterprises
2 alleged herein of Providence, Providence St. Joseph Health care insurance payors, and/or
3 governmental insurance entities. None of the acts of profiteering are isolated incidents.

4 7.19 The last such criminal profiteering activity occurred within five years after the prior
5 incident of profiteering activity.

6 7.20 The criminal profiteering acts had similar purposes: *e.g.*, financial gain to the
7 DEFENDANTS.

8 7.21 Each of the DEFENDANTS' criminal profiteering acts yielded similar results and
9 caused similar injuries to the Plaintiffs to their person, property and/or business, including damage
10 to their physical being and their finances (both as, *inter alia*, to medical expenses and as to lost
11 wages).

12 7.22 Because of DEFENDANTS' failures to disclose and affirmative acts of
13 concealment, the pattern of criminal profiteering activity was not discoverable until April 12, 2022,
14 when the U.S. Attorney publicly announced its investigative findings regarding Providence, Dr.
15 JASON A. DREYER, DO, and Dr. DANIEL ELSKENS, DO about the misconduct undertaken in
16 combination to commit the profiteering alleged herein.

17 **The Enterprise**

18 7.23 An enterprise "includes any individual, sole proprietorship, partnership,
19 corporation, business trust, or other profit or nonprofit legal entity, and includes any ... group of
20 individuals associated in fact although not a legal entity, and both illicit and licit enterprises and
21 governmental and nongovernmental entities." RCW 9A.82.010(8).

22 7.24 Enterprises consist of ongoing organizations, formal or informal, with various
23 associates function as a continuing unit. See *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn. 2d 820, 839,

1 355 P.3d 1100 (2015).

2 7.25 The enterprises used in, and with a nexus to, the pattern of criminal profiteering
3 activity under RCW 9A.82.100 include health care insurance providers for the plaintiff Class(es),
4 including government health care insurers (i.e., “governmental” entities U.S. Department of Health
5 and Human Services (HHS); the Defense Health Agency (DHA), acting on behalf of the TRICARE
6 Program; the Federal Health Benefits Program; the U.S. Department of Veterans Affairs (VA)
7 which administers the VA Community Program, and the Washington Health Care Authority
8 (HCA)) and private insurers whose payments promoted the medically unnecessary surgeries and
9 related health care.

10 7.26 In the alternative, the enterprise used in, and with a nexus to, the pattern of criminal
11 profiteering under RCW 9A.82.100 is PROVIDENCE, or Providence St. Joseph Health, or the
12 association-in-fact of both. Both PROVIDENCE and Providence St. Joseph Health are legal
13 corporations or legal entities, making them enterprises under RCW 9A.82.010(8). Their
14 association-in-fact had a common purpose of engaging in the aforesaid course of conduct, through
15 an ongoing organization, and with associates functioning as continuing unit. For example,
16 Providence and Providence St. Joseph Health share offices and have functioned as a continuing
17 unit for years up through the disclosures of April 2022. Further, PROVIDENCE is a participating
18 provider in the government and private health care insurer enterprises.

19 7.27 Independent motives and stakes of Dr. JASON A. DREYER, DO are sufficient to
20 form the basis of an independent conspirator.

21 7.28 Independent motives and stakes of JANE DOES and JOHN DOES, including in
22 respect to concealment and failing to report, are sufficient to form the basis of an independent
23 conspirator.

Each of these aforementioned enterprises is a legal entity, that is, a partnership, corporation, business trust, or other profit or nonprofit legal entity, governmental and nongovernmental entities, or an association or group of individuals associated in fact although not a legal entity within the meaning of RCW 9A.82.010(8). Each alleged enterprise is an ongoing organization, formal or informal, with various associates functioning as a continuing unit.

Causation / Injury and Remedies

7.29 As a direct and proximate result of DEFENDANTS' acts or omissions discussed herein, Plaintiff Class(es) and individual Plaintiffs have suffered injuries to their person, business, or property including but not limited to economic loss, pain, suffering, emotional distress, and injury to their physical being, including injuries compensable under RCW 9A.82.080 and 9A.82.100. These injuries include damages from the investment of proceeds in, or for the maintenance, establishment, or operation of the enterprise under RCW 9A.82.080.

7.30 Plaintiffs are entitled to an award of damages including but not limited to: compensation for their actual damages; treble damages; a civil penalty of \$250,000; injunctive, equitable, and forfeiture relief as set forth in RCW 9A.82.100(2), (3) and (4), and (4)(f); and costs and investigative and attorneys' fees as authorized by RCW 9A.82.100(1)(a).

7.31 The equitable relief includes, but is not limited to, disgorgement of ill-gotten gains obtained from the profiteering in order to prevent, restrain, and deter future unlawful conduct by the Defendant,⁵ including by use of the bonus incentive compensation scheme.

⁵ See e.g., *Creel v. Says*, 2022 WL 4490141 (E.D. Tex. Sept. 27, 2022) (the law does not allow a person to profit from wrongdoing at the expense of another, and disgorgement can be a proper equitable remedy under RICO laws to, *inter alia*, prevent, restrain and deter future unlawful conduct).

VIII. CAUSE OF ACTION: FAILURE TO REPORT (RCW 70.41.210)

8.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 7.31 as if fully set forth herein.

8.2 Pursuant to RCW 70.41.210, PROVIDENCE, through its employees and agents, including Dr. DANIEL ELSKENS DO, Dr. JASON DREYER, DO, and JOHN DOE / JANE DOE DEFENDANTS, had a mandatory duty, *inter alia*, to report within 15 days to the Washington Department of Health any voluntary restriction or termination of the practice of Dr. DANIEL ELSKENS DO or Dr. JASON DREYER, DO – “including [their] voluntary resignation” – while they were under investigation or the subject of a proceeding by PROVIDENCE regarding unprofessional conduct, or in return for PROVIDENCE not conducting such an investigation or proceeding, or not taking action against said physicians.

8.3 Unprofessional conduct includes (a) incompetence, negligence or malpractice which results in injury or which creates an unreasonable risk that a patient may be harmed; (b) practice beyond the scope of practice as defined by law or rule; (c) misrepresentation or fraud in any aspect of the conduct of the business or profession; (d) the commission of any act involving moral turpitude, dishonesty or corruption relating to the medical profession; or (e) promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure or service. RCW 18.130.180(1), (4), (12), (13), (16).

8.4 As set forth in the preceding paragraphs, PROVIDENCE and its employees and agents, including JOHN DOE / JANE DOE DEFENDANTS, allowed Dr. DANIEL ELSKENS DO and Dr. JASON A. DREYER, DO to resign after initiating investigations into their unprofessional conduct as defined herein and did not report them to the Department of Health as required by RCW 70.41.210.

1 8.5 Reporting is encouraged by public policy. RCW 70.41.210(5) provides civil
2 immunity to a hospital, its chief administrator, or its executive officer who file a good faith report
3 with the Department of Health.

4 8.6 PROVIDENCE and its agents/employees also failed to report Dr. DANIEL
5 ELSKENS DO and Dr. JASON A. DREYER, DO to the NPDB. As a result of the failure to report,
6 these surgeons continued to conduct unnecessary, improper, and defective procedures for profit
7 while harming multiple patients, and defrauding patients and insurance companies, including
8 Medicare and Medicaid.

9 8.7 The purpose of, *inter alia*, this mandatory reporting is to “promote safe and
10 adequate care of individuals in hospitals” and to enforce minimum standards and rules “for the
11 safe and adequate care of patients.” RCW 70.41.010, .030.

12 8.8 Plaintiffs, who are/were individuals receiving care at PROVIDENCE SMMC and
13 at MULTICARE / DEACONESS, were within the class of individuals for whose special benefit
14 this mandatory reporting statute was enacted – e.g., for their safe and adequate care.

15 8.9 Given the above and the allegations contained herein, PROVIDENCE owed an
16 implied statutory duty of care to each Plaintiff in the Class(es) to report Dr. DANIEL ELSKENS
17 DO and Dr. JASON A. DREYER, DO.

18 8.10 DEFENDANTS breached this implied statutory duty when they failed to report Dr.
19 DANIEL ELSKENS DO or Dr. JASON A. DREYER, DO to the Washington Department of
20 Health and the NPDB.

21 8.11 As a direct and proximate result of DEFENDANTS’ breach of the duties owed, Dr.
22 JASON A. DREYER, DO and Dr. DANIEL ELSKENS DO continued to conduct medically
23 unnecessary or otherwise improper procedures for profit while harming patients and defrauding

1 patients and insurance companies, including Medicare and Medicaid; and each Plaintiff was
2 permanently injured, suffered, and continues to suffer physical disability and pain, medical
3 expenses, and other damages to be fully determined at trial.

4 8.12 It was reasonably foreseeable that DEFENDANTS' breach of the duties owed
5 would result in the damages described herein.

6 **IX. CAUSE OF ACTION: CONSUMER PROTECTION ACT (RCW 19.86)**

7 9.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and
8 incorporate by reference paragraphs 1.1 through 8.12 as if fully set forth herein.

9 9.2 As set forth herein above, DEFENDANTS used false or deceiving marketing
10 practices and otherwise engaged in unfair or deceptive acts or practices to entice Plaintiffs to
11 engage in their services. This constitutes an unfair or deceptive act or practice under RCW 19.86.

12 9.3 These acts or omissions of DEFENDANTS occurred in furtherance of trade or
13 commerce.

14 9.4 The unfair or deceptive act or practice of DEFENDANTS as set forth herein above
15 constitute fraud which affects the public interest and violates the Washington Consumer Protection
16 Act.

17 9.5 As a direct and proximate result of DEFENDANTS' violations of the Act, as set
18 forth herein above, Plaintiffs suffered damages.

19 9.6 DEFENDANTS are now liable for those damages in an amount fully set forth at
20 trial, but include damages to property and business, the trebling of same, and reasonable attorney
21 fees and costs.

**X. CAUSE OF ACTION: MEDICAL NEGLIGENCE (RCW 7.70) vs. PROVIDENCE,
Dr. JASON A. DREYER, DO AND Dr. DANIEL ELSKENS, DO
(Providence Plaintiffs, Named and Putative)**

10.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 9.6 as if fully set forth herein.

10.2 As health care providers, PROVIDENCE, Dr. JASON A. DREYER, DO, and DR. DANIEL ELSKENS, DO owed Plaintiffs a duty to comply with the standard of care.

10.3 Defendant PROVIDENCE, through its employees and agents, including Dr. JASON A. DREYER, DO and DR. DANIEL ELSKENS, DO, failed to exercise the degree of care, skill, and learning expected of reasonably prudent health care providers in the same profession or class in the State of Washington acting in the same or similar circumstances. Such conduct proximately caused severe injuries and damages to plaintiffs. Defendant's conduct violated RCW 4.24, 13 RCW 7.70, and other applicable law.

10.4 The statute of limitations in respect to the medical negligence claims will be tolled on certain patients as a result of the Continuing Course of Treatment Doctrine; and Discovery Rule.

XI. CONSENT/INFORMED CONSENT (Providence Patients, Named and Putative)

11.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 10.4 as if fully set forth herein.

11.2 As set forth herein above, despite fraudulent reporting otherwise, DEFENDANTS breached their duty to inform plaintiffs of all material facts, including risks and alternatives, which a reasonably prudent patient would need to make an informed decision on whether to consent to or reject proposed courses of treatment, including but not limited to the risk of medically unnecessary procedures for which the motive was financial gain and not proper medical treatment. This failure proximately caused injury to plaintiffs.

XII. CORPORATE NEGLIGENCE (Providence Plaintiffs, Named and Putative)

12.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 11.2 as if fully set forth herein.

12.2 A medical facility, in this case, PROVIDENCE, has the following duties: (1) a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment; (2) a duty to select and retain only competent physicians and staff; (3) a duty to oversee all persons who treat patients within its walls as to patient care; and (4) a duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients.

12.3 PROVIDENCE breached the afore listed duties by, without limitation:

12.3.1 failing to select, retain, and supervise competent staff;

12.3.2 failing to ensure of proper oversight of staff;

12.3.3 failing to assure proper diagnosis and care;

12.3.4 failing to formulate, adopt and enforce adequate rules, policies and/or adopting policing or practices which in themselves created an unnecessary and unreasonable risk to Plaintiff(s);

12.3.5 failing to conduct an adequate credentialing background investigation pursuant to best practice guidelines before hiring Dr. JASON DREYER and Dr. DANIEL ELSKENS, and giving them privileges to see patients and perform surgeries at PROVIDENCE facilities.

12.4 PROVIDENCE's breach of corporate duties as set forth above directly and proximately led to injuries and damages to the Plaintiffs.

12.5 PROVIDENCE is now liable for the injuries and harm suffered by Plaintiffs as a result of its Corporate Negligence

1 relied upon DEFENDANTS' fiduciary duties in following their advice on the need for medical
2 treatment.

3 14.4 DEFENDANTS have statutory and common law duties to inform patients of risks
4 of medical care, and all information needed for patients to make informed healthcare decisions.

5 14.5 DEFENDANTS were required to inform patients about the substantially increased
6 risk of treatment by Dr. JASON A. DREYER, DO and Dr. DANIEL ELSKENS DO due to their
7 history of performing medically unnecessary and otherwise improper procedures.

8 14.6 Without this information, Plaintiffs were deprived of material facts to inform their
9 treatment decisions.

10 14.7 DEFENDANTS knew that in withholding material facts, they were affirmatively
11 misrepresenting information to Plaintiffs.

12 14.8 DEFENDANTS intended for Plaintiffs to rely on DEFENDANTS, and
13 DEFENDANTS' concealments, to make informed healthcare decisions.

14 14.9 Upon information and belief, DEFENDANTS were further engaging in false or
15 misleading reporting in medical reports in an effort to conceal evidence of negligent, violative,
16 unethical, and fraudulent treatment practices.

17 14.10 Plaintiffs did not know DEFENDANTS were concealing material facts and had the
18 right to and did reasonably rely on DEFENDANTS to meet its statutory and common law duty to
19 inform them of material facts. DEFENDANTS' failure to inform Plaintiffs, in the face of a legal
20 duty to do so, constitutes fraud by concealment, as specifically identified herein.

21 14.11 Plaintiffs suffered damages as a result of a reasonable reliance on DEFENDANTS'
22 fraud and misrepresentation.

XV. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS and OUTRAGE

15.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 14.11 as if fully set forth herein.

15.2 DEFENDANTS owed Plaintiffs a common law duty not to engage in conduct that would cause the Plaintiffs severe emotional distress.

15.3 By misleading Plaintiffs, concealing evidence of negligent, violative, unethical, and fraudulent treatment practices, performing unnecessary and ill-advised medical procedures, and operating below the standard of care, DEFENDANTS negligently inflicted emotional distress upon Plaintiffs.

15.4 Additionally, DEFENDANTS' conduct as set forth herein constituted extreme and outrageous conduct that would shock the conscious of an ordinary, reasonable person; which outrageous conduct resulted in Plaintiffs' suffering severe emotional distress.

XVI. LOSS OF CONSORTIUM

16.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 15.4 as if fully set forth herein.

16.2 As a direct and proximate result of DEFENDANTS' negligent and intentional acts or omissions as set forth herein, Plaintiffs' statutorily qualified family members suffered loss of consortium, and special damages if available.

XVII. WRONGFUL DEATH/SURVIVOR ACTIONS

17.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 16.2 as if fully set forth herein.

17.2 DEFENDANTS' negligent and intentional acts or omissions as set forth herein resulted in, and/or contributed to the injury and ultimate death of certain claimants, resulting in

1 damages/loss to their estate and to statutorily qualified family members, both individually and/or
2 in their capacity as personal representative of the estate(s).

3 17.3 Defendants are liable for those negligent acts or omissions pursuant to Wash. Rev.
4 Code § 4.20.005 (wrongful death and survivor statutes).

5 XVIII. VICARIOUS LIABILITY

6 18.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and
7 incorporate by reference paragraphs 1.1 through 17.3 as if fully set forth herein.

8 18.2 Upon information and belief, employees and agents of the defendants, implicated
9 in this cause of action were at all times relevant to this cause of action acting within their official
10 capacity and scope of employment with and for PROVIDENCE.

11 18.3 Upon information and belief, physicians, employees, or agents alleged to have been
12 negligent in the treatment/care of Plaintiff(s) in this case were either employees, agents in fact, or
13 alternatively, ostensible agents.⁶

14 18.4 PROVIDENCE is liable for injuries/damage suffered by Plaintiff(s) as a result of
15 the intentional and negligent acts or omissions of their employees, owners, managers, agents, or
16 ostensible agents under the theory of *Respondeat Superior*.

17 XIX. NEGLIGENCE PER SE

18 19.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and
19 incorporate by reference paragraphs 1.1 through 18.4 as if fully set forth herein.

20 19.2 Certain of the acts of the DEFENDANTS set forth herein amount to regulatory and
21

22
23 ⁶ *Adamski v. Tacoma General Hospital*, 20 Wn. App. 98, 112, 579 P.2d 970 (1978) (hospitals are
24 liable for the doctors who work at them).

1 statutory violations. The violation of regulations and statutes constitutes negligence per se.⁷

2 **XX. RES IPSA LOQUITUR**

3 20.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and
4 incorporate by reference paragraphs 1.1 through 19.2 as if fully set forth herein.

5 20.2 DEFENDANTS had exclusive control over the actions and omissions which
6 constituted the sum total of the care provided to Plaintiffs during their pre-surgical, surgical, and
7 post-surgical care.

8 20.3 DEFENDANTS had exclusive control over the actions and omissions which
9 ultimately resulted in the defrauding of Plaintiffs and their medical insurance providers, including
10 Medicare and Medicaid.

11 20.4 DEFENDANTS acted intentionally to conceal the fraud in respect to regulatory
12 reporting, billing, and patient medical records as set forth herein above.

13 20.5 As a result of this concealment and fraud, Plaintiffs had no ability to take action on
14 their own behalf to avert the injuries and damages cause by the DEFENDANTS negligent and
15 intentional acts or omissions which caused Plaintiffs to suffer injuries and damages.

16 20.6 The injuries and damages sustained by the Plaintiffs here do not occur in the
17 absence of negligence or intentional actions in variance with statute and regulatory authority
18 undertaken by the medical care team.

19 20.7 DEFENDANTS are now liable for the damages Plaintiff has suffered as a result of
20 their negligence pursuant to the doctrine of *Res Ipsa Loquitur*.

21
22 ⁷ Restatement (Third) of Torts §14 states in relevant part that an actor is negligent per se if that
23 actor violates a statute that is designed to protect against the type of accident or harm caused by
24 the actor's conduct, and the plaintiff is someone the statute is designed to protect.

XXI. UNJUST ENRICHMENT (Providence Plaintiffs, Named and Putative)

21.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 20.7 as if fully set forth herein.

21.2 With each and every payment received as described herein, each DEFENDANT received a benefit at a Plaintiff's expense, and the circumstances make it unjust for the DEFENDANT to retain the benefit without payment.

21.3 DEFENDANTS are liable for the damages to Plaintiff for unjust enrichment, including restitution and disgorgement.

XXII. DISGORGEMENT

22.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 21.3 as if fully set forth herein.

22.2 In violation of their common law, equitable, and statutory duties to Plaintiffs, Defendants profited from their wrongful conduct, and these profits must be disgorged in order to deter the continuation of this wrongful conduct.

22.3 Defendants have obtained ill-gotten profits from their misconduct, including payments from federal and state governments, and from health insurers and patients. These payments are proximately caused by the aforesaid violations, and can be reasonably approximated.

22.4 Disgorgement of these ill-gotten profits is necessary to deter further violations.

XXIII. WAIVER OF PRIVILEGE

23.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 22.4 as if fully set forth herein.

23.2 Waiver of the physician-patient privilege under RCW 5.60.060(4)(b) does not waive or release any other rights or privileges, including those related to the physician-patient

relationship, other than the privilege set out in the above-cited statute.

XXIV. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against DEFENDANTS in their favor and in favor of the Class as follows:

24.1 Finding that this action is properly maintainable as a Class action pursuant to CR 23(b)(2), 23(b)(3) and 23(c)(4), and certifying each Class.

24.2 Finding the Plaintiffs are prevailing parties against each DEFENDANT, jointly and severally, for violations of RCW 9A.82.100 and RCW 9A.82.080 (Criminal Profiteering) and award Plaintiffs compensation equal to their actual damages, a tripling of those damages, a civil penalty of \$250,000, injunctive and remedial relief as set forth in RCW 9A.82.100(2), (3), and (4), and forfeiture under RCW 9A.82.100(4)(f).

24.3 Awarding Plaintiffs reasonable investigative and attorneys' fees and costs under RCW 9A.82.100(1)(a).

24.4 Finding the Plaintiffs are prevailing parties against each DEFENDANT, jointly and severally, for violations of RCW 19.86 (Consumer Protection Act) and award Plaintiffs damages as allowed under the Act, including a tripling of damages and reasonable attorney fees and costs.

24.5 Finding Plaintiffs to be the prevailing parties against each DEFENDANT for violations of the implied statutory duty to report Dr. DANIEL ELSKENS DO and Dr. JASON A. DREYER, DO, which resulted in general and special damages to be determined at trial.

24.6 Finding DEFENDANTS were otherwise negligent in their acts as outlined above.

24.7 Finding DEFENDANTS' negligence resulted in injury to each Plaintiff.

24.8 Ordering DEFENDANTS to identify all Class Plaintiffs pursuant to their records.

24.9 For compensatory damages suffered by Plaintiffs and Class resulting from any and

1 all claims pled herein, in amounts to be proven at trial.

2 24.10 For unjust enrichment, Plaintiffs seek restitution and disgorgement.

3 24.11 For costs and disbursements.

4 24.12 For statutory attorney fees.

5 24.13 For private forfeiture relief, see RCW 9A.82.100(4)(f).

6 24.14 For a forfeiture money judgment in the amount of no less than \$22,690,458.

7 24.15 For disgorgement of ill-gotten gains obtained as a result of Defendants' breach of
8 their duties to the Plaintiffs, including through criminal profiteering, breach of fiduciary or
9 statutory duty, or benefitting from unjust enrichment.

10 24.16 If Defendant brings any frivolous or unfounded defenses, for attorneys' fees and
11 costs pursuant to RCW 4.84.185 and/or Rule 11 of the Superior Court Civil Rules.

12 24.17 For statutory interest on the judgment from the date judgment is entered until paid
13 in full.

14 24.18 For prejudgment interest on the special damages.

15 24.19 For prejudgment interest on liquidated damages.

16 24.20 All damages allowed under RCW 4.20.010, RCW 4.20.20, RCW 4.20.046, RCW
17 4.20.060, and RCW 4.24.010, as applicable.

18 24.21 For entry of equitable nonmonetary remedies and a permanent injunction, including
19 but not limited to as authorized in RCW 9A.82.100(2), (3), (4) and (4)(f):

20 24.21.1 enjoining DEFENDANTS from utilizing any form of
21 productivity bonus metric scheme that encourages surgeons to engage in high
22 volume patient care, or increased complex surgical procedures.

23 24.21.2 requiring DEFENDANTS to provide open public access to

peer review materials and credentialling files for all surgeons.

24.21.3 requiring DEFENDANTS to disclose the names and contact information for putative members of all Classes and/or to assist Plaintiffs' counsel in identifying and notifying class members of their rights under this action;

24.21.4 divesting and disgorging DEFENDANTS of the proceeds of their profiteering activity.

24.22 For such other and further relief as the Court may deem just and equitable.

24.23 The Plaintiffs reserve the right to elect remedies if there is a determination of a conflict between claims or remedies.

XXV. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand that all causes of action pled herein be tried to a 12-person jury with sufficient alternates to assure complete justice without interference or delay.

DATED THIS 18th day of December, 2023.

GILBERT LAW FIRM, P.S.



William A. Gilbert, WSBA #30592
Attorneys for Plaintiffs